

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

SMARTFLASH LLC and )  
SMARTFLASH TECHNOLOGIES ) DOCKET NO. 6:13cv447  
LIMITED )

-vs- )

APPLE INC. ) Tyler, Texas  
12:50 p.m.  
February 19, 2015

TRANSCRIPT OF TRIAL  
AFTERNOON SESSION  
BEFORE THE HONORABLE RODNEY GILSTRAP,  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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24 Proceedings taken by Machine Stenotype; transcript was  
25 produced by a Computer.

1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 MR. BATCHELDER: Your Honor, if I may?

6 THE COURT: Yes.

7 MR. BATCHELDER: Following up on your last  
8 instruction, I want to be sensitive to the Court. We've got  
9 a Gruse/IBM patent and an IBM system; and I just wanted Your  
10 Honor to be aware, when I refer to the IBM system, I'm  
11 abiding by your order.

12 THE COURT: I understand that. If you'll abide by  
13 my order on the IBM/Gruse patent --

14 MR. BATCHELDER: I absolutely will.

15 THE COURT: -- and the InterTrust and all the other  
16 ones.

17 MR. BATCHELDER: Absolutely, Your Honor.

18 THE COURT: I'm aware of the IBM system.

19 MR. BATCHELDER: Thank you, sir.

20 THE COURT: That was a part of that lengthy  
21 discussion I referenced earlier.

22 All right. Anything else before we bring in the  
23 jury?

24 Bring in the jury, please.

25 COURT SECURITY OFFICER: All rise for the jury.

1 (Jury in.)

2 THE COURT: Please be seated.

3 All right, Mr. Batchelder. You may continue with  
4 your examination.

5 MR. BATCHELDER: Thank you, Your Honor.

6 ANTHONY WECHSELBERGER, DEFENDANT'S WITNESS,

7 PREVIOUSLY SWORN

8 DIRECT EXAMINATION

9 BY MR. BATCHELDER:

10 Q. Mr. Wechselberger, I believe we left off on Slide 75  
11 talking about the Ginter/InterTrust patent. What are we  
12 looking at here on Slide 75, sir?

13 A. We're -- excuse me -- we're looking at Figure 3 from the  
14 patent. And could you repeat the question that got us here,  
15 please?

16 Q. Sure. I was just asking, what we're looking at here  
17 on -- an example of how rules and controls work in the  
18 Ginter/InterTrust patent.

19 A. Right. So this figure is supplied in the patent, and  
20 it's a flowchart. You can see little arrows from the top to  
21 the bottom, and I've highlighted and blown up the entry  
22 point, which says "request."

23 So this is what's referred to as a process flowchart  
24 that has certain functions that take place as the information  
25 goes through the various stages.

1           So content -- this is a content request. Enters at the  
2 top. The first thing the request hits is a go/no go symbol  
3 by a stoplight.

4           If it's a flat no go, it's the end of the transaction.  
5 The customer or consumer does not have access to the content.

6           If it is a go, the process continues, and there are a  
7 number of other steps then that come into play to control the  
8 access to content.

9           And the patent tells us at Column 58, Lines 25 through  
10 30, beginning at the bottom, that the budget -- what they  
11 call a budget process, limits how much content usage is  
12 permitted.

13           It has an example. A limit by the number of times the  
14 content may be accessed, for example, or copied; limit the  
15 number of pages or other amount of content that can be used.  
16 So that is a condition.

17           And it also tells us then at Column 58, Lines 11 through  
18 13, that the meter process keeps tracks of events.

19           So in this patent, the content access is called an  
20 event. And if it's throttled, for example, in a rental  
21 situation by number of accesses, then you need to keep track  
22 of the number of accesses.

23           And so the number is symbolized by the budget, and where  
24 you are in that is tracked by the meter. And so that's the  
25 philosophical picture that the patent gives us for how that

1 takes place.

2 Q. Sir, did Mr. Racz invent the idea of selling apps on an  
3 electronic app store?

4 A. No, absolutely not.

5 Q. And what is the Ginter/InterTrust patent? What light  
6 does it shed on that?

7 A. This patent, the Ginter/InterTrust patent, is quite rich  
8 in its teachings of various types of content. And included  
9 in that -- those types are not only the types of content that  
10 we're thinking about in terms of songs and books, but it also  
11 describes a process called delivery of load modules.

12 By itself, that's hard to understand; but when you read  
13 the patent, you understand a load module is an executable.  
14 It's a small miniature program, if you will.

15 And by teaching ways of circulating load modules  
16 throughout that process flow in Figure 2 -- I showed at the  
17 opening where you have the content highway and so forth --  
18 they can distribute load modules, as well as content through  
19 that process.

20 So a load module can be an executable, and that  
21 translates into an applet or an application. So as of the  
22 application date of this patent, it accommodates not only the  
23 circulation and control over management but also executable  
24 programs or software.

25 Q. And app is short for what, sir?

1 A. App has become short for what we used to call an  
2 application, which is a program.

3 Q. Okay. And is a load module a software application?

4 A. A load module carries information about applications  
5 throughout the system, yes.

6 Q. Turning to Slide 76, sir, you've got what on the left?

7 A. This is Figure 1 from the Ginter/InterTrust patent. And  
8 this is the wrap-up slide that I prepared for discussion  
9 about this patent.

10 And I've also color coded it to match previous color  
11 codings that we've seen. And shown on this slide is a video  
12 production studio in purple. That's a content supplier.

13 Consumer is in this little house here in red. There's  
14 an office environment, is another type of content consumer.

15 In the middle, the system manager, as I've called it,  
16 sometimes operates as a storefront. And finally, in green,  
17 it says intimate -- independent financial provider.

18 So in comparison to Smartflash, similar colors, similar  
19 functions can be accommodated through the teachings of this  
20 patent.

21 Q. Same components?

22 A. They can be implemented to implement -- they can be  
23 implemented to derive the same functions as the Smartflash  
24 claims.

25 Q. Did the Patent Office consider the Ginter/InterTrust

1 patent when Smartflash was prosecuting its patents?

2 A. No, they didn't.

3 Q. And was there a different Ginter patent considered by  
4 the Patent Office in connection with the '221 and '772?

5 A. Yes, sir. There is another patent authored by the same  
6 Mr. Ginter, but it's not the one that I have been discussing.

7 Q. Let's turn back to your timeline, sir. And which  
8 reference would you like to focus on next?

9 A. So next is the one on the far right. It's still ahead  
10 of Smartflash in terms of priority, and it's the  
11 Ansell/Liquid Audio patent.

12 Q. And this is the Mr. Ansell that -- who we saw testify  
13 yesterday?

14 A. Yes. As a matter of fact, Mr. Ansell was here in the  
15 court yesterday.

16 Q. All right. And we've now got up Defendant's Exhibit 21.  
17 And what does this show, sir?

18 A. This is the cover page to the patent, and it's titled,  
19 Copy Security for Portable Music Players.

20 The first named inventor is Mr. Steven Ansell, who we  
21 met yesterday. The assignee is Liquid Audio. And the filing  
22 date is March 26th, 1999.

23 Q. And how does that filing date compare to Mr. Racz's  
24 priority date?

25 A. It's still ahead of Smartflash.

1 Q. Let's take a look at Page 79.

2 What does the Ansell/Liquid Audio patent describe as the  
3 set of challenges it was confronting?

4 A. So from Column 1 of this patent, Lines 23 through 26 and  
5 28 through 33, we are -- it is explained that M3 -- MP3  
6 players provide essentially no protection whatsoever against  
7 unauthorized copying of copyrighted works. That's piracy.  
8 And unlimited identical digital copies of the music signal to  
9 friends with no compensation whatsoever to the copyright  
10 holder. So the focus here is content management control, and  
11 in particular, a piracy problem.

12 Q. Okay. And what are you showing here in Slide 80 on the  
13 left and on the right?

14 A. On the left is -- has become my usual approach to this.  
15 The citations from the prior reference patent compared  
16 against what Smartflash is directed to, and by now, we  
17 recognize that it's the Internet and piracy, unauthorized  
18 access to content. So a need to find a way to address the  
19 problem of data piracy.

20 Q. Okay. So as between these two, who recognized this  
21 challenge first?

22 A. Ansell -- Mr. Ansell and Liquid Audio recognized it  
23 first.

24 Q. And did the Patent Office consider the Ansell/Liquid  
25 Audio patent when it decided to issue Mr. Racz's patents?

1 A. No, it didn't.

2 Q. If we could turn next to Slide 81. You've got a couple  
3 new references here in blue. What are they?

4 A. So these are two references, which I'll be using in  
5 combination with the other references that I've already  
6 covered. And I'd like to give a brief introduction of these.

7 Q. All right. Should we start Poggio/Sun?

8 A. Sure.

9 Q. And we've got Defendant's Exhibit 35, and what is this,  
10 sir?

11 A. This is the cover page of a patent application which  
12 means it wasn't the formally issued patent, but it was  
13 publicly available information. And it's entitled Virtual  
14 Vending System and Method For Managing the Distribution,  
15 Licensing and Rental of Electronic Data.

16 The date of publication -- this is a European  
17 publication -- is November 26th, 1997. The assignee was Sun  
18 Microsystems, Inc., and the inventor -- the first named  
19 inventor is Mr. Andrew Poggio.

20 Q. And how does this date compare to the Smartflash  
21 priority date?

22 A. We are still well ahead of Smartflash at November 1997  
23 versus October 1999.

24 Q. Have you analyzed this application, sir?

25 A. I have.

1 Q. What are you depicting here on Slide 83?

2 A. So this is Figure 1 from the Poggio/Sun Microsystems  
3 patent. It provides an overview of the system architecture,  
4 and it explains in Column 2, Lines 32 through 36, and  
5 Column -- and Lines 29 through 31, that this is a mechanism  
6 to market, to distribute, and to receive payment for the  
7 vendors of electronic data.

8 In this system, the vendor is shown at the top, that  
9 it's a data supplier or a content supplier.

10 Q. Before we move on to the second quote, sir, can I ask  
11 you to -- the first few words at the top quote, the virtual  
12 vending machine. What is a virtual vending machine?

13 A. In yellow is the box virtual vending machine, and it is  
14 a central management device. That's why it's in yellow,  
15 manages the system. And it resides between the content  
16 suppliers as -- called the vendors in this patent and the  
17 content consumers down here at the bottom. That's shown as a  
18 bunch of client computers. And so off to the side, we also  
19 have an electronic banking network.

20 And, generally speaking, the data flow in this  
21 architecture is for the virtual vending machine to manage on  
22 behalf of the content suppliers the delivery of their content  
23 in a secure way and paid for to consumers down here at the  
24 bottom. So the process flow goes content, through the  
25 vending machine, to consumers once payment has been made.

1 Q. What does the Poggio/Sun Microsystems application say  
2 about rental options?

3 A. The second citation that I've highlighted describes  
4 various license options are available which can include  
5 procuring a license for a permanent time period or a  
6 time-limited or rental basis. And in this patent, to get  
7 access to a piece of content, they manage that access through  
8 what's called a license. So if you get a license, you get a  
9 license permanently or you might get a license for a rental  
10 period.

11 Q. Turning up Slide 84, does this elaborate on the rental  
12 option?

13 A. It elaborates on two things, yes, the rental option, as  
14 well as the consumer experience in deciding how they want to  
15 go about accessing content.

16 And at Column 7, Lines 13 through 16, it explains that  
17 the user selects the license option; i.e., to purchase a  
18 permanent option or by selecting the menu appropriately. And  
19 the user could alternatively select the rent option.

20 And what it's talking about is in the figure here,  
21 Figure 6, that -- if you can imagine yourself sitting around  
22 looking at a -- a website similar to what you might find when  
23 you're shopping at Amazon, there are a number of selections  
24 to be made.

25 Shown here is the purchase option or a rent option; and

1 if you choose rent, then you decide how long you want to rent  
2 it for. And as you fill in the spaces, the price that you  
3 will have to pay comes up on this page accordingly. And  
4 before you're done, you have to click yes or no.

5 Q. Sir, in the bottom box, if I can invite your attention,  
6 in the first line to the -- it's not highlighted, but the  
7 phrase license fee schedules. Do you see that?

8 A. Yes.

9 Q. What's a license fee schedule?

10 A. So a license fee schedule basically is the process that  
11 I've just explained, and this is Column 25 -- I'm sorry,  
12 patent application at 25 through 29. And so the schedule  
13 process is what pops out of the -- the consumer buying  
14 selection process.

15 When you're done, and assuming your payment has been  
16 processed and approved, you'll end up with a piece of content  
17 and the license at your player device. And the player device  
18 will then manage the use of content accordingly to the  
19 license.

20 Q. All right. Let's turn to Slide 85, and let me ask you,  
21 how does a user purchase -- make a purchase in the Poggio/Sun  
22 Microsystems application?

23 A. Once again, it's easiest to look at this as a series of  
24 steps that will be numbered. This is -- so we can look at  
25 Step 1. I've already color coded these. You can see the

1 user location as the client computer, making a request for  
2 identified content -- content that they would like to  
3 purchase. This is explained in Column 9, Lines 45 through  
4 48.

5 And Step 2 follows.

6 Q. What is Step 2?

7 A. Step 2 is explained at Column 10, Lines 1 through 4.

8 The -- what's called an invoice comes down to the  
9 computer, and you can see the consumer is shopping on this  
10 web page that shows up on their PC.

11 So this is a confirmation of what the consumer has  
12 chosen, and about -- and the consumer has to click yes and  
13 enter the payment information for that. Going back up then  
14 to the virtual vending machine is credit information or  
15 similarly to pay for some -- for the content, along with the  
16 invoice which identifies the content.

17 Q. All right. Would you explain Step 3, please?

18 A. Step 3 is explained Columns 10 -- Column 10, Lines 11  
19 through 14. Once the virtual vending machine receives the  
20 request, it then turns to the electronic banking network with  
21 the information about the content and the consumer's  
22 financial information, shown as the credit card. It  
23 validates that the process will -- is approved and returns  
24 the approval to the virtual vending machine.

25 Q. And after the payment is confirmed, what does the

1 vending machine do?

2 A. As we saw, that was content going from the vending  
3 machine down to the client computer. Sometimes content may  
4 be stored at the web server itself.

5 What I've shown here is in the event the consumer has  
6 elected something that's not stored actually on the web  
7 server, it can go out, all the way back to the vendor itself  
8 where there's a library of products. It can be brought into  
9 the web server, virtual vending machine, and downloaded to  
10 the consumer.

11 Now, at Column 10, Lines 24 through 30, it is explained  
12 that in a rental situation, preferably, rental products are  
13 formatted to include a time bomb or other disabling device.

14 And that's in the license. And this is figuratively  
15 saying you have access to the content until the time bomb  
16 goes off and at that point your rental period is over.

17 Q. And you're also citing to Figure 7 of the Poggio/Sun  
18 Microsystems application?

19 A. Yes. Yes, that's correct.

20 Q. Okay. And how do the components of this Poggio/Sun  
21 Microsystems application compare to those disclosed by  
22 Smartflash?

23 A. They're similar. Click forward. Color coding is now  
24 complete. We see the vendors' source of content and the  
25 management machine store front and the client computers and

1 banking and financial institutions mapping over onto the like  
2 functions in the Smartflash patent.

3 Q. Same components?

4 A. Yes, sir.

5 Q. Let's turn now to the next item on your timeline. What  
6 is that?

7 A. This is the Puhl/Motorola patent, the last one.

8 Q. All right. And we're looking now at Defendant's Exhibit  
9 42?

10 A. Yes.

11 Q. And this is the Puhl/Motorola patent. And would you  
12 walk us through what's on this slide, sir?

13 A. Yes. We're looking at the cover page to the patent.

14 The title is: Secure wireless electronic commerce  
15 system with digital product certificates and digital license  
16 certificates.

17 The assignee is Motorola. The inventor is Mr. Larry  
18 Puhl. It has a filing date of March 26th, 1999.

19 Q. And how does that date compare to the Smartflash  
20 priority date?

21 A. We are -- this is prior art, so we are still ahead of  
22 Smartflash.

23 Q. And what are you highlighting there from the abstract of  
24 this Puhl/Motorola reference?

25 A. So the abstract is this box right on the front of the

1 cover page, and it's -- gives you a short description of what  
2 the patent is about.

3 And the point that I wanted to make with this is we are  
4 dealing now with a wireless network specifically, and there  
5 are a number of server or servers, which are coupleable or  
6 connected to the wireless gateway onto the consumer products.

7 And so I have a picture of what it actually is talking  
8 about on the next slide.

9 Q. Let me just pause and ask you, sir, are the accused  
10 Apple products here wireless products?

11 A. Yes, sir, they are.

12 Q. Slide 93, you've got Figure 4 here?

13 A. That is correct.

14 And I chose this out of the figures in the patent  
15 because it speaks directly to the summary I picked out of the  
16 abstract. And what you'll find here are a number of -- these  
17 are the servers.

18 There's the wireless gateway, which simply means that's  
19 the entry and exit point through the -- through the --  
20 through that air, if you will, the wireless network. And the  
21 user device is shown as Item 450 at the bottom, basically a  
22 cell phone.

23 Q. All right. What are you pointing to with your red arrow  
24 at the bottom, sir?

25 A. So this patent includes a device, a module, called a

1 SIM, subscriber identity module, and that is a memory  
2 component, which has an identity included into it. Most  
3 phones have a SIM module. Some are embedded. Some you can  
4 move around or change. But if you'll click, we'll find that  
5 that is inserted into the consumer unit.

6 So now the unit has an identity. And one more click,  
7 we're going to see the system in action very simply and  
8 quickly.

9 What we're looking at are three different storefronts,  
10 if you will. Think of this as a virtual shopping mall. You  
11 can buy books, buy games, buy music.

12 And if we click one more time, through the wireless  
13 gateway, the consumer is able to shop. Here, they went to  
14 the game store, provided credit card information, the game  
15 store responded by downloading a game, and it went into the  
16 cell phone.

17 So we have a selection, payment, and delivery process  
18 through a wireless infrastructure to a -- to a mobile device.

19 Q. All right, sir. Now, can prior art be combined in an  
20 analysis of invalidity in your understanding?

21 A. Yes. You can study prior art references and look at a  
22 single reference and find everything in the asserted claims.  
23 And that's called anticipation.

24 Or if you don't find everything in a single -- single  
25 claim, you are welcome to seek an alternate or an additional

1 reference and use these together. And they should complement  
2 each other. There should be a reason to put them together.

3 And when those aspects are met, you can use those in  
4 combination to invalidate the claim.

5 Q. And have you identified any specific combinations that  
6 you relied on here?

7 A. Yes, I have. These are the combinations that I'll talk  
8 about. I've introduced all of these individually in the  
9 materials that I've presented so far.

10 And what I'll show are the Gruse/IBM patent, it's said  
11 to be in combination with Puhl/Motorola; Stefik/Xerox in  
12 combination with Poggio/Sun and so forth.

13 And in one case, I actually have three combinations:  
14 Ansell/Liquid Audio in combination with Poggio/Sun in  
15 combination with Puhl/Motorola.

16 Q. All right. We're now looking at Slide 101, and you've  
17 got Gruse/IBM plus Puhl/Motorola?

18 A. That's correct.

19 Q. All right. And would you explain what's depicted here?

20 A. So in validating a reason to put two references together  
21 in combination, one needs to identify a reason to do that.

22 And at a high level, based on what we've all looked at  
23 so far on these references, it's recognizable, I hope, that  
24 these are similar systems for controlling delivery and  
25 consumption of protected content in an electronic

1 distribution environment.

2       You may recall from the Gruse patent, they had a  
3 thing -- Gruse/IBM patent, they had a device -- a vehicle  
4 called a license. In the Puhl/Motorola -- Motorola patent,  
5 they used content certificates.

6       These are control mechanisms based on cryptograph --  
7 cryptographic principles. We don't need to worry about it,  
8 but it shows that they already have some things in common,  
9 and so that's caused a motivation to combine.

10 Q. And why did you consider this specific combination, sir?

11 A. Once I have a motivation, then there needs -- then they  
12 will look for a reason to bring Puhl and Motorola together  
13 with Gruse/IBM.

14       And what we learn is -- or what I found is that the  
15 Gruse/IBM patent has a variety of devices and used over a  
16 variety of different networks, for example, satellite and  
17 wireless. And Puhl/Motorola has a wireless for its  
18 infrastructure.

19       So it's clear that these can be complementary and work  
20 together.

21 Q. All right. Let's turn to Slide 103, and here you've got  
22 what combination, sir?

23 A. A combination of Stefik/Xerox and Poggio/Sun  
24 Microsystems.

25       And at a high level, you'll notice in purple, I've

1 provided a little summary of what I'm talking about. At a  
2 high level, these are both similar systems, again, for  
3 controlling delivery and consumption of protected content,  
4 electronic distribution.

5 Stefik/Xerox includes the notion of fees being  
6 associated with access to content. And, of course,  
7 Poggio/Sun, as we just looked at, has licenses for license  
8 periods. Once again, we have -- we see that these two  
9 references can complement each other.

10 Q. And what would the Poggio/Sun Microsystems application  
11 add to the Stefik/Xerox patent?

12 MR. BATCHELDER: Turn to Slide 104.

13 A. Okay. Sorry. I think I got ahead of myself.

14 Can I go back one, please?

15 Q. (By Mr. Batchelder) Sure.

16 A. All right. Yeah, I did go ahead of myself.

17 THE WITNESS: Go one forward.

18 A. So the answer to your question is shown on this slide.  
19 And I mentioned the notion of fees associated with the  
20 exercise of a right.

21 Stefik/Xerox talks in terms of rights and tells them the  
22 duration over on the Poggio/Sun Microsystems license fees and  
23 rental periods. That was my reference about these two  
24 complementing each other.

25 Q. (By Mr. Batchelder) Thank you.

1           Let's move on to the next slide, 105. What's the  
2 combination you're depicting here, sir?

3       A.    So this is the combination with Ginter/InterTrust with  
4 Poggio/Sun. Again, at the first entry level, high level,  
5 similar systems for controlling delivery and consumption and  
6 protected content in an electronic distribution networks.

7           Electronic highway is the way Mr. Ginter and InterTrust  
8 like to talk about it. And the Poggio system we saw the --  
9 excuse me -- virtual vending machine.

10           THE WITNESS: Next slide.

11       Q.    (By Mr. Batchelder) Okay. And what would Poggio/Sun add  
12 to the Ginter/InterTrust patent?

13       A.    Poggio/Sun talks about the receipt -- to receive the  
14 product upon receipt of a corresponding electronic payment.

15           And in purple, I've talked about the -- the marriage of  
16 these two.

17           There's various content distribution and transaction  
18 methods taught in the Ginter/InterTrust patent. Among these  
19 transactions are electronic -- I'm sorry -- various  
20 participants in electronic commerce.

21           So when you read about electronic commerce, commerce  
22 means merchandising. That means buying products for a fee.

23           And so we have that common denominator between the  
24 Ginter/InterTrust and the Poggio/Sun Microsystems.

25       Q.    Turning now to the Ansell/Liquid Audio patent, why would

1 a person of ordinary skill combine Ansell/Liquid Audio with  
2 the Poggio/Sun reference?

3 A. Without sounding like too much of a broken record, all  
4 these systems are associated or directed towards similar  
5 systems for controlling delivery and consumption of protected  
6 content. So it's electronic distribution and electronic  
7 commerce systems at the high level.

8 Q. All right. And turning to 108, what would have been  
9 added through this combination?

10 A. Poggio/Sun Microsystems talks about receiving the  
11 product upon receipt of a corresponding payment. And this is  
12 download following receipt.

13 And over on the Ansell/Liquid Audio, a mechanism for  
14 preventing the unauthorized copying of signals discouraged to  
15 protect intellectual property rights of artists.

16 And so from the standpoint of distributing and playing  
17 digitized audio/visual signals, the -- similar digital  
18 distribution functions are found in Poggio/Microsystems.

19 Q. All right, sir. And now turning to Slide 109, what are  
20 you depicting here with your purple language on the bottom?

21 A. This is the example where I indicated I would be  
22 combining three references. So we have the two I just  
23 finished discussing, and now we'll look to Puhl/Motorola.

24 These are electronic systems for merchandising, and so  
25 is Puhl/Motorola. In particular, you'll recall this is a

1 wireless distribution network using a mobile phone for  
2 consumer applications.

3 Q. Turn to Slide 110. What are you describing here? On  
4 the bottom you've got variety of devices, networks plus  
5 mobile phones, wireless. What's that a reference to?

6 A. So this is the -- the -- the second part of the three  
7 references, variety of devices. The present invention is not  
8 limited, it says here, to the use of the Internet, as other  
9 types of communication -- communications connections can be  
10 used. And as an example of other types of communications  
11 connections, I'm showing the wireless gateway that's  
12 described in the Puhl/Motorola patent.

13 Q. All right, sir. In Slide 111, why are you showing the  
14 IBM system in your discussion of these other systems and  
15 combinations?

16 A. The IBM system, if you'll recall when we went through  
17 that item, was not a single patent or a single reference. It  
18 was, in fact, a collection of references, and I've repeated  
19 those bullets that I presented earlier. It included the  
20 public proof-of-concept trial, the technical information,  
21 press releases, public demonstrations, the cooperation  
22 between IBM and the music labels, and the IBM -- and the  
23 Gruse/IBM patent itself.

24 And so when you combine various disclosures like this  
25 and look at it as a single reference, that is also called a

1 combination.

2 Q. Okay. And, again, why would a person of ordinary skill  
3 combine these references in connection with the IBM system?

4 A. In this case, all those references point toward the same  
5 system. And so if you wanted -- if you were one of ordinary  
6 skill in the art and you wanted to know about it, they all  
7 would complete your overall understanding of what that system  
8 is.

9 Q. Sir, have you considered whether the prior art that  
10 you've explained discloses or renders obvious the asserted  
11 claims -- the four asserted claims here?

12 A. I have.

13 Q. And what was your conclusion?

14 A. My conclusion is, based on these prior art references,  
15 that all four of the asserted claims are invalid.

16 Q. Are these those four claims?

17 A. Yes, sir.

18 Q. Would you just read them off for the record?

19 A. Yes. '720 patent, Claim 13. '221 patent, Claim 32.  
20 And the '772 patent, Claims 26 and 32.

21 Q. All right. And what prior art references have you  
22 considered in connection with the first of those -- that is,  
23 the '720 patent, Claim 13?

24 A. So I'm going to use a -- a repeating pattern as I go  
25 through my invalidation analysis with -- with the Court and

1 the jury. And I will show the patent claim -- excuse me,  
2 I'll show the patent claim, the asserted claim, and color  
3 code certain of the elements so it's easier to keep track as  
4 we go through.

5 And one at a time, I will analyze the prior art  
6 reference against each of the elements of the claim.

7 And so on this opening one, we find that I'm going to  
8 talk about Gruse/IBM as an invalidating reference.

9 And when I'm done, I'm going to cover the IBM system.  
10 I'm actually going to cover the IBM system as I go through  
11 the IBM patent because that makes it go faster for us.

12 Then I'll talk about the Stefik/Xerox in combination  
13 with Poggio/Sun, and finally Ginter/InterTrust in combination  
14 with Poggio/Sun.

15 Q. All right, sir. In Slide 114 you've grayed out  
16 everything but the preamble. Why have you done that?

17 A. So in the process of going through this, I'll highlight  
18 one claim element or preamble at a time so that it sticks out  
19 for us. And then we'll address it one at a time.

20 Q. Okay. What are you depicting there on Slide 114?

21 A. So beginning with the preamble, which describes a data  
22 access terminal for retrieving data from a data supplier and  
23 providing the retrieved data to a data carrier. And  
24 beginning with IBM/Gruse -- I'm sorry, Gruse/IBM, Figure 6  
25 that we've seen before, here is the end-user device.

1           And you'll recall the content hosting site. And so the  
2 user -- end-user device, as described at Column 14, Lines 34  
3 through 37, ingests or accepts information coming from a data  
4 supplier. And inside the user device there is a data  
5 carrier.

6 Q. And what is a data carrier in con -- in the context of  
7 this case?

8 A. Inside the user device, there is a memory in that red  
9 box. It's a small computer with a memory.

10 Q. Okay. And we've seen before, the Court's claim  
11 construction was data carrier is a medium capable of storing  
12 information; is that right?

13 A. That is correct.

14 Q. And how does that apply to what you're showing us here?

15 A. It directly applies. The device that accepts the  
16 content from the data supplier goes on to a data carrier  
17 inside the end-user device. In fact, I repeat -- I call  
18 attention to that in the following slide.

19           I've highlighted the need for a data carrier, as  
20 described in the preamble, reminding us of the Court's  
21 construction, a medium capable of storing information.

22           In Figure 1D and also at Column 89, Lines 38 through 52  
23 of the patent, the figure describes what's inside an end user  
24 device. And in there is a DC library collection. That is a  
25 memory storage location for content.

1 Q. So does the Gruse/IBM patent disclose this preamble of  
2 '720 patent, Claim 13?

3 A. Yes.

4 Q. And does the IBM system also do so?

5 A. Yes, sir. That's the next slide.

6 Q. Walk us through this, would you, please?

7 A. So with the IBM system, we have our end-user device,  
8 which you'll recall is this Sony Walkman. And we also --  
9 we're -- found out that the IBM system had the similar types  
10 of processing components as that were described in the  
11 Gruse/IBM patent. I've highlighted the content preparation  
12 and hosting site, and the client software, which was  
13 disclosed as going inside the end-user devices. So the --  
14 this IBM system also meets the requirements of the preamble.

15 Q. And does the -- the device in front of you, that Walkman  
16 device, does it have memory?

17 A. Yes, sir. That is the MagicGate memory device that we  
18 saw in the picture earlier inside there.

19 Q. Okay. So does -- does it meet -- meet the Court's claim  
20 construction of data carrier?

21 A. Yes.

22 Q. All right. We're now moving on to the second element;  
23 is that right?

24 A. Yes.

25 Q. Okay.

1 A. And the second element asks for a first interface for  
2 communicating with the data supplier. So the end-user device  
3 has an input/output capability so that it can interface with  
4 the data supplier. And in the next slide --

5 Q. If I could just ask you, sir, what -- what passage are  
6 you citing from Defendant's Exhibit 23?

7 A. Thank you. This is Gruse/IBM patent, Figure 6.

8 Q. All right. And what are you showing here on Slide 118?

9 A. This is the next element, a data carrier interface for  
10 interfacing with the data carrier. And the box in the  
11 middle, which was the data carrier previously, now we're  
12 looking at how you get information into and out of that data  
13 carrier. And I've highlighted the arrows associated with  
14 that. That's Figure 1D, and it's supported by Column --  
15 information at Column 81, Lines 56 through 59.

16 Q. And was there such an interface also in the IBM system?

17 A. Yes. Next slide shows a picture of the Walkman device I  
18 mentioned, how the bottom comes off of it, and the memory  
19 stick goes in. At the edge of that MagicGate are some little  
20 pins, and that is literally a physical interface.

21 Q. All right. Moving on to Slide 120, there's a program  
22 store and a processor that are required here?

23 A. Yes. I'm going to cover the next two elements in the  
24 same picture. There's a program store and a processor.

25 Q. All right. What are you showing here, sir?

1 A. Back to the same Figure 1D, with information supporting  
2 that at Column 9, Lines 33 through 34. So we've moved  
3 outward a little bit to look at the -- some of the rest of  
4 the components of the end-user device.

5 End-user device is a software driven machine which means  
6 it has a processor, it has code, it has memory that execute,  
7 just like any little computer. And we're given examples of a  
8 web browser, watermarking, decryption functions. There's  
9 applications. So I've highlighted those functions in purple.

10 Q. All right. What -- what element comes next, sir, in the  
11 claim?

12 A. Code to read payment data from the data carrier --  
13 excuse me -- and forward the payment data to a payment  
14 validation system.

15 Q. All right. And what are you showing here from this  
16 patent?

17 A. Recalling Figure 6, which showed us the overall system  
18 and remembering the clearinghouse there, the end-user devices  
19 forwards payment data to the clearinghouse. This is  
20 supported by the information in Column 77, Lines 31 through  
21 42. So the payment data requirement is satisfied.

22 Q. All right. What are you showing here, sir?

23 A. And, likewise, for the IBM system, since it was based on  
24 the Gruse/IBM patent, Figure 6, we can point to the same  
25 function and recognize that we were told right here in

1 Defendant's Exhibit 33 that the clearinghouse function was  
2 implemented in the IBM system.

3 Q. All right. Turning to the next element, the code to  
4 receive element, is that disclosed in the Gruse/IBM patent?

5 A. Yes.

6 Q. Please explain.

7 A. Code to receive payment validation from the payment  
8 validation system. So we have sent payment data, and now  
9 this is the next step of receiving validation data back.  
10 It's explained at Columns 26, Line -- Column 26, Line 39  
11 through 42, Column 84, Lines 34 through 35.

12 If the verifications are successful, the clearinghouse  
13 builds and transfers the license secure container to the  
14 end-user device.

15 So returned from the clearinghouse, following this path  
16 to the end-user device, is -- on approval of the payment, is  
17 information that goes back to the user device -- that is,  
18 payment validation data.

19 Q. Okay. And you're referring to Figure 6, and what other  
20 lines and passages?

21 A. Column 26, Lines 39 through 42, and 80 -- Column 84,  
22 Lines 34 through 35.

23 Q. Okay. And then what have you added to the bottom?

24 A. So to complete the -- the description and provide  
25 additional support, this slide shows the actual secure

1 container that's returned to the user device that I've just  
2 mentioned. It is supported by the same citation I just gave,  
3 and with an additional citation at Column 84, Lines 45  
4 through 46.

5 So se -- secure container goes back to the user device  
6 as a transaction ID, and it's provided by the electronic  
7 digital content store.

8 Q. All right. And what are you showing here with the  
9 clearinghouse?

10 A. So this brings into the discussion, again, the IBM  
11 system and the fact that the same clearinghouse has been  
12 identified as part of that system.

13 And I've cited to Defendant's Exhibit 33, which said  
14 the -- remember, they've referred to their system as EMMS,  
15 electronic manage -- electronic music management system, so  
16 we know we're talking about IBM system there, and they talked  
17 about reporting of royalties and financial clearing.

18 Q. All right. Let's move on to the next element. This is  
19 code responsive to payment validation data. What does the  
20 IBM/Gruse -- excuse me, Gruse/IBM patent say about this?

21 A. So I've highlighted two -- I've highlighted a -- a part  
22 of this, code responsive to the payment validation data to  
23 retrieve data from the data supplier. So after all the  
24 payment stuff is taken care and subject to the payment  
25 process, then the device is allowed to go out and get the

1 data.

2       So citing from the patent at Column 26, Lines 53 through  
3 57, it says: After receiving the license secure container --  
4 that was what we just saw coming from the clearinghouse. So  
5 that satisfied the code responsive to. Then the -- the user  
6 device will request the content secure container from a  
7 content hosting site.

8       Let me complete the citations for the record. Also  
9 included Column 26, Lines 39 through 42, Column 26, Lines 53  
10 through 57.

11 Q. All right, sir. Moving to the next element, what are  
12 you showing here from the Gruse/IBM patent?

13 A. The next claim element says code responsive to the  
14 payment validation data, again, to receive at least one  
15 access rule from the data supplier. So it's been a two-step  
16 process to get us here -- payment, retrieve the content. Now  
17 we're going to retrieve an access rule. Code responsive.

18       After receiving the license smart card and after  
19 receiving the content secure container, then at the player  
20 device, when an end user device receives the content that was  
21 purchased, the store usage conditions are encoded into that  
22 content.

23       So this is a process that happens at the end-user device  
24 to put the usage condition into memory, that data carrier at  
25 the usage -- at the user device.

1 Q. And so the record is clear, the SC in these codes stands  
2 for secure container?

3 A. Yes. I've been saying it out loud because sometimes SC  
4 is sometimes confused with smart card. It's not smart --  
5 it's a -- a secure container.

6 Q. Okay.

7 A. And for the record, I've been citing from Column 26,  
8 Lines 53 through 57, Column 84, Lines 34 through 36, and  
9 Column 28, Lines 32 through 35 -- 35.

10 Q. All right, sir. Let's move to the next limitation, and  
11 what are you depicting here in connection with that?

12 A. So this claim element requires that the access rule that  
13 was just written into the data carrier should specify a  
14 condition for accessing the content, and that condition  
15 should be dependent upon the amount of payment used.

16 And this time I am referencing the Gruse/IBM patent at  
17 Column 62, Rows 47 through 62, which is where the usage  
18 condition table is located. I'm also going to cite to Column  
19 28, Lines 39 through 42.

20 Examples of store usage conditions for music, for  
21 example, is that the song can be played, for example, n  
22 number of times. Looking up at the table, we find a row of  
23 usage -- for usage condition that talks about a rental. Keep  
24 in mind we can do purchase, we can do rental as shown at the  
25 top.

1 And, in particular, for different usage condition 1, 2,  
2 and 3, it shows you can have Price 1, Price 2, or Price 3.

3 And so the access conditions, based upon the amount of  
4 payment, is clearly disclosed.

5 Q. Turning to the final limitation added by Claim 13, it  
6 lists some devices, correct, sir?

7 A. Yes.

8 Q. And at the end of that list, there's an and/or. Do you  
9 see that?

10 A. Yes.

11 Q. What does that mean?

12 A. The final claim limitation, which now brings us to the  
13 Dependent Claim 13, talks about the kind of device this might  
14 be, mobile communication device, a personal computer,  
15 et cetera. And it says and/or a satellite television  
16 interface device, point being any one of these devices  
17 satisfies this claim element.

18 Q. And is that -- are any of those then disclosed in the  
19 Gruse/IBM reference?

20 A. Yes, sir, Column 9, 33 through 36, and 23, 12 through  
21 14, discloses PCs, set-top boxes, Internet appliances, IBM  
22 Think Pad, laptop computer. So it's a final requirement.

23 Q. Just to be clear, you mentioned PCs. What does that  
24 stand for?

25 A. The text -- formal text in the disclosure says PCS.

1 That either means personal communication system or it's a  
2 typo, and it should be PC small S, personal computers. So  
3 either way it's satisfied.

4 Q. Okay. And the bottom one ends with laptop computer in  
5 the bottom right?

6 A. Yes.

7 Q. And is that a personal computer?

8 A. Sure is.

9 Q. All right. Let's turn to Slide 129. And you're talking  
10 here about the IBM system?

11 A. Yes.

12 Q. And how does that relate to the -- this final claim  
13 element?

14 A. This shows different kinds of user devices. We have  
15 seen the Sony Walkman, which we have a physical copy of up  
16 front.

17 I mentioned the mobile phone network disclosure that was  
18 described as being compatible with the IBM system. So we  
19 have a mobile -- excuse me -- a mobile device, as well as a  
20 cell phone audio player combination. So the IBM system meets  
21 this claim element.

22 Q. Have we now stepped through every single element of  
23 Claim 13 of the '720 patent?

24 A. Yes, sir.

25 Q. And is it or is it not disclosed by the Gruse/IBM patent

1 and IBM system?

2 A. All the claim requirements and claim elements are fully  
3 disclosed by the Gruse/IBM patent and the IBM system  
4 patent -- IBM system. Excuse me. It's not a patent.

5 And so we can checkmark the top two boxes for Gruse/IBM  
6 and IBM system.

7 Q. All right. Let's move next to the Stefik/Xerox patent.

8 And let me just ask you, in the upper right, you've done  
9 some highlighting of the various references. Can you just  
10 explain to the jury what you mean by that?

11 A. Yes. Thanks. I wanted to mention that.

12 To kind of keep track of where we are as I have to go  
13 through this process, we just did the Gruse/IBM and IBM  
14 system. Now we'll move on to Stefik in combination with  
15 Poggio.

16 So you can look up there and track progress as we go.  
17 So the next series of checkoffs will be related to the  
18 elements as disclosed by Stefik/Xerox and Poggio/Sun.

19 Q. Thank you, sir.

20 All right. So what are you showing here with the pulls  
21 from the Stefik/Xerox patent?

22 A. Back to the preamble: A data access terminal for  
23 retrieving data from a data supplier.

24 This is Figure 12 from the Stefik/Xerox patent. I'll  
25 remind everybody, this was what they called the repository,

1 which is an end-user device. And it has an external  
2 interface shown, and that is the interface to the outside  
3 world.

4 And so the data retrieved from a data supplier would  
5 come in through this interface 1206.

6 Q. Okay. And what are you showing on the bottom?

7 A. I'm citing to Column 7, Lines 44 through 49. When in  
8 the requester mode, the repository will be initiating  
9 requests to receive -- requests to access digital works.

10 So there's the support for getting digital works or  
11 receiving digital works from a data supplier for that  
12 element.

13 Q. All right. Let's move to -- what did you add here in  
14 yellow, sir?

15 A. The data carrier is a requirement of this preamble.  
16 There has to be a data carrier storage element inside.

17 Figure 12 shows us a memory storage for content and a  
18 memory storage for what's called descriptor.

19 Descriptor is the memory storage locations for usage  
20 controls or access rules in this -- in this patent.

21 So the claim element has been satisfied, and we move to  
22 the first interface for communicating with the data supplier.

23 And I mentioned a moment ago the external interface now  
24 highlighted in blue. So that's satisfied. That is explained  
25 in Figure 12.

1           And just to remind us from the animation, repository 2  
2   is the end user, and it made a request for content, which was  
3   then delivered from the content supplier.

4   Q.   And what are the passages from the Stefik/Xerox patent  
5   that you're relying on?

6   A.   Column 7, 16 through 22.

7   Q.   Let's move to the next claim element.  What does the  
8   Stefik/Xerox patent say about this?

9   A.   A data carrier interface for interfacing with the data  
10  carrier.

11           And I just described the data carrier down here in 1207.  
12  Those are arrows for interfacing with the data carrier, and  
13  that's in Figure 12.

14  Q.   So is that element met?

15  A.   Yes, sir.

16  Q.   What are the next two?

17  A.   Program for -- a program store storing code, memory  
18  storage for code, and a processor coupled to the first  
19  interface.

20           So back to Figure 12 again -- we make lots of use of  
21  this figure -- there is a processing element and a memory for  
22  the processor shown as elements 1201 and 1202.  So these two  
23  claim elements are satisfied.

24  Q.   Let's go to the next limitation, sir.  What is this?

25  A.   Code to read payment data from the data carrier and

1 forward the data -- payment data to a payment validation  
2 system.

3 Q. All right. And what have you shown from this reference?

4 A. So this is where I bring in the Poggio/Sun combination  
5 reference. So we'll see a combination for the first time and  
6 how that happens.

7 And I've drawn from the animation that we saw earlier  
8 for the Poggio/Sun application and Figure 7, and I find  
9 further support there in the Poggio/Sun Microsystems patent  
10 application at Column 10, Lines 1 through 4.

11 And we don't have to run through the animation again;  
12 but I'll just remind everybody that we saw payment data going  
13 from the user location, which is where the data carrier is,  
14 up to the virtual vending machine where it subsequently --  
15 you may remember it was delivered to a payment validation  
16 system.

17 So this element is satisfied by the combination of  
18 Stefik/Xerox and Poggio/Sun.

19 Q. All right, sir. Next limitation, what are we seeing  
20 here?

21 A. Code to validate -- code to receive payment validation  
22 from the payment validation system.

23 So this is the next piece of the animation from the  
24 Poggio/Sun Microsystems and recalling the approval of the  
25 payment process that took place as supported in Poggio/Sun at

1 Column 10, Lines 11 through 14.

2 We see there: Signifying successful completion of the  
3 payment transaction. So this claim element is satisfied.

4 Q. All right. Let's move to the next one. What are you  
5 showing here?

6 A. This is the element that has: Code responsive to the  
7 payment validation data to go get the content.

8 And I'm citing to the Poggio/Sun Microsystems  
9 application at 10/24 through 30 and Figure 7. The method  
10 then proceeds to format the purchased product for  
11 transmission to the user.

12 So this is the code responsive part; and subsequent to  
13 that, the content is sent from the virtual vending machine  
14 down to the user device, and that --

15 Q. What have you added to the top there?

16 A. Thank you. I'd forgotten I had the follow-on slide.

17 We see now the content coming from the code responsive  
18 part to -- I'm sorry -- the -- yes -- the content coming from  
19 the virtual vending machine down to the client computer.

20 Q. All right, sir. And what are you citing there?

21 A. Same citation, Figure 7 and -- from Poggio/Sun  
22 Microsystems and Column 10, Lines 24 through 30.

23 Q. All right. Let's move to the next limitation. What are  
24 you showing here?

25 A. The second part of the code responsive to the payment

1 validation requirement is to go out and then receive the  
2 access rule, citing to Figure 7 of Poggio/Sun, and once  
3 again, back to the animation, as well as citing from Column  
4 10, Lines 24 through 30 and Figure 7, remembering that  
5 Poggio/Sun explains that in conjunction with, for example, a  
6 rental situation.

7 The rental products are formatted to include a time  
8 bomb. So that declares the rental period over, and so that's  
9 clearly a use rule, an access rule. That happens after  
10 payment validation has taken place.

11 Q. So is that element satisfied?

12 A. Yes.

13 Q. All right. Moving to the next one, sir, what are you  
14 showing here?

15 A. This is the claim element that talks about the use  
16 condition and access rule condition being dependent upon the  
17 amount of payment associated with the transaction.

18 Continuing to use the combination of Stefik/Xerox and  
19 Poggio/Sun, go to Figure 6 where we learned earlier that in  
20 the process of purchasing a component, that the consumer,  
21 depending upon their purchase and their rental time period,  
22 gets a different requirement for price. And so that's  
23 dependent upon the amount of payment.

24 I'm also looking at support from Stefik/Xerox, Column  
25 18, Lines 13 through 16. Talks about five copies for \$10,

1 unlimited copies for a hundred dollars. So it -- depending  
2 upon payment.

3 And additional support in Sun Microsystems -- Poggio/Sun  
4 at Column 7, Lines 13 through 16. So this element is  
5 satisfied.

6 Q. All right. Then moving to the final element, sir, what  
7 are you depicting here?

8 A. This element, you recall we talked about a moment ago,  
9 first time we saw it, a personal computer, an audio/video  
10 player, and/or cable satellite television, any one of those  
11 devices.

12 In the Stefik/Xerox patent at Column 13, Lines 48  
13 through 50, they describe what in this invention is called a  
14 rendering repository. That's a play-out device.

15 And in the same patent, Columns 51, Line -- Column 51,  
16 Lines 33 through 37, they add additional detail saying that  
17 that type of a rendering device or play-out device could be a  
18 general purpose computer or video systems or audio systems.

19 And so the claim element is satisfied.

20 Q. Have we now been through all of the claim limitations in  
21 connection with the Stefik/Xerox and Poggio/Sun combination?

22 A. Yes, we have.

23 Q. And what is your opinion, sir?

24 A. We need to put a check on the third box.

25 Q. Why?

1 A. Because these -- the combination of Stefik/Xerox -- let  
2 me start over.

3 The Stefik/Xerox patent, in combination with the  
4 Poggio/Sun patent application satisfied all the requirements  
5 of Claim 13, and, therefore, Claim 13 is invalid.

6 Q. Sir, you've got that list on the right. To be clear,  
7 how many blue checkmarks do we need to demonstrate that this  
8 claim is invalid?

9 A. Any prior art reference or prior art reference  
10 combination that satisfies all those immediately makes that  
11 claim invalid, so you only need one.

12 Q. And so far you've got?

13 A. Three.

14 Q. Let's move on to your last. This is the  
15 Ginter/InterTrust patent combined with Poggio/Sun reference?

16 A. Yes.

17 Q. All right. First limitation, what are you showing here?

18 A. Okay. Back we go again to the preamble. We'll start  
19 up, and now we're talking, as you can see in the illuminated  
20 items up there, Ginter/InterTrust, Poggio/Sun, combination,  
21 citing from the former Ginter/InterTrust, Column 209, Lines  
22 64 through 66.

23 I described the content objects earlier as the container  
24 that moves content around in the Ginter/InterTrust patent.  
25 It explains that objects may be received by retrieval from an

1 object repository over a network.

2 So what's being described there is the data supplier  
3 providing content to a data retriever or a data carrier in  
4 the end user device.

5 Q. So is that preamble met?

6 A. Yes.

7 Q. And what are you adding here?

8 A. Additional support. This is Figure 8 from the  
9 Ginter/InterTrust patent, and it's described at Column 62,  
10 Lines 64 through 67. Highlighted the data carrier  
11 requirement in the preamble.

12 And we have -- Figure 8 is a block diagram of the Ginter  
13 consumer appliance or electronic appliance. And there's a  
14 box called secondary storage. And you probably can't see it,  
15 but there's a thing there called VDE objects. That's where  
16 those objects go. So we have a data carrier.

17 Q. VDE objects. VDE? Is that what you said?

18 A. Yes.

19 Q. Okay.

20 A. I've tried to avoid being too technical in this patent.  
21 Everything is VDE. It stands for virtual distribution  
22 environment. So that's the -- that's where the objects go,  
23 content object.

24 Q. Okay. So is the preamble satisfied by this  
25 Ginter/InterTrust patent, sir?

1 A. Yes, it is.

2 Q. Let's move on to the next limitation. What are you  
3 showing from the Ginter/InterTrust patent?

4 A. This limitation asks for the interface for communicating  
5 with the data supplier. We can use the same Figure 8 block  
6 diagram of the electronic appliance.

7 There is a box called communications controller  
8 connected to a little cloud there that's the network. Out in  
9 that network is the data supplier. So this is the portal  
10 into which data content -- data -- content data comes.

11 It is supported by disclosure in the specification at  
12 Column 62, Lines 30 through 33. The electronic appliance --  
13 that's this diagram -- can communicate with other electronic  
14 appliances via the network. And it's those other electronic  
15 appliances, of course, that have the content.

16 Q. So is this claim element satisfied by the  
17 Ginter/InterTrust patent, sir?

18 A. Yes.

19 Q. Next claim limitation, what are you showing here?

20 A. Data carrier interface for interfacing with a data  
21 carrier. This is inside the appliance and there's a  
22 communications arrow shown between the communications  
23 controller and the memory location.

24 So that's the interface for communicating with the data  
25 carrier. This is supported in the Ginter/InterTrust patent

1 at Column 62, Lines 37 through 40.

2 Q. Move on to the next limitations, the program store and  
3 the processor limitations.

4 A. Okay.

5 Q. What are you showing here from Ginter/InterTrust?

6 A. Once again, I'll address those two limitations together.  
7 Program store, storing code, that's memory where code goes.  
8 And a processor to execute the code, that's nicely revealed  
9 in this same Figure 8 as the CPU and the associated memory  
10 658.

11 Additional support was provided in the patent at Column  
12 75, Lines 35 through 37, and Column 288, 61 through 68.

13 Q. So the record is clear, sir, what is a CPU? What is  
14 that acronym?

15 A. It stands for central processing unit. And  
16 Mr. Mirrashidi, I believe yesterday, described it in the  
17 Apple products, for example, as the brain of the consumer  
18 unit.

19 Q. The P in CPU is the processor?

20 A. Yes, sir.

21 Q. Okay. And that matches up to the processor in the --  
22 Mr. Racz's claim?

23 A. Exactly.

24 Q. Okay. Let's move on to the next element, sir. What is  
25 that element, and what are you disclosing here?

1 A. Code to read payment data from the data carrier and to  
2 forward the payment data to a payment validation system.

3 Again, this is a combination invalidation argument that  
4 I'm presenting, and for the payment processes, I'm going to  
5 present exactly the same support that I just provided when we  
6 looked at the Stefik/Xerox patent.

7 So you'll see the similar animation, citations, and  
8 hopefully, we can speed that up a little bit because it's  
9 exactly the same arguments for the same claim elements, this  
10 time around in combination with Ginter/InterTrust.

11 Additional support in the Poggio/Sun patent is at Column  
12 10, Lines 1 through 4. So this is entering payment data that  
13 goes -- payment data -- excuse me -- going out of the data  
14 carrier as payment data.

15 Q. So is this element satisfied, sir?

16 A. Yeah. Yes.

17 Q. Moving on to the next limitation, what is it, and what  
18 are you depicting here?

19 A. This is the code to receive payment validation data from  
20 the payment validation system. This is disclosed in the  
21 Poggio/Sun Microsystems patent using the animation I provided  
22 in Column 10, Lines 11 through 14. This is satisfied.

23 Q. Moving on to the next limitation, the code responsive to  
24 payment validation data, the first of those, what are you  
25 depicting here, sir?

1 A. Once again citing from the Poggio/Sun patent  
2 application, Column 10, Lines 24 through 30: The method then  
3 proceeds to format the purchase product for the transmission  
4 to the user.

5 The method then satisfies the "code responsive to"  
6 portion. So the data doesn't come back until after the  
7 content approval payment process has taken place. So this  
8 element is satisfied.

9 Q. Moving to the next code responsive element, what are you  
10 depicting here, sir?

11 A. This is the element that requires now the downloading of  
12 the usage condition. Same citation, Column -- Column 10, 24  
13 through 30, in Poggio/Sun. The method then proceeds to  
14 format the purchased product transmission. Preferably the  
15 rental products are formatted to include a time bomb. Time  
16 bomb includes the license termination process, so that's the  
17 usage control conditions.

18 Also, in Ginter/InterTrust at Column 57, Lines 17  
19 through 23, it's described that the budgets process was in  
20 that usage control Figure 3 that I showed earlier that may  
21 specify, among other things, limitations on usage of  
22 information content. So we find this satisfied both in  
23 Ginter/InterTrust, as well as Poggio/Sun. This element is  
24 satisfied.

25 Q. Let's move on to the next one, sir. What is that

1 requirement, and what are you depicting here from the  
2 Poggio/Sun Microsystems application?

3 A. That the rule that has just been imported and put into  
4 the data carrier needs to include a condition, depending upon  
5 the amount of payment. So I'll cite back to the Poggio/Sun  
6 Microsystems, Figure 6, that I showed earlier. Recall, when  
7 the user decides to purchase, rent. And if it's rent, they  
8 can select a rental period which buries the purchase price.

9 So it's depending upon -- the amount of payment is how  
10 long they get to use the -- the product. There's additional  
11 support on that subject, Column 7, Lines 13 through 16 in  
12 Poggio/Sun. This is satisfied.

13 Q. Moving on to this final requirement, sir, again, remind  
14 us what it is and whether it's satisfied in the  
15 Ginter/InterTrust patent?

16 A. It is -- it requires that the player device integrated  
17 with the mobile communication device, a personal computer, an  
18 audio/video player, any one of these that's found in the  
19 prior art reference will satisfy this limitation.

20 In the Ginter/InterTrust patent at Column 60, Lines 52  
21 through 30 -- 55 -- 52 through 55, they talk about the  
22 appliance -- that's the consumer appliance -- personal  
23 computer. The element is satisfied.

24 Q. Have we now stepped through each requirement of this  
25 claim?

1 A. Yes.

2 Q. What should we do in that final box, sir?

3 A. I've shown that Claim 13 is invalid in light of  
4 Ginter/InterTrust and Poggio/Sun combination. That claim is  
5 invalid. We should check that box.

6 Q. Is that another independent reason to invalidate this  
7 claim?

8 A. It is.

9 Q. All right. Let's move on to the next claim, which is  
10 Claim 32 of the '221 patent. What references are you  
11 considering here?

12 A. These are exactly the same references that I just went  
13 through element-by-element for Claim 13. This time we are in  
14 a different patent, '221, Claim 32. And the interesting news  
15 is that most of these claim elements are exactly the same as  
16 the one that we just looked at.

17 And so if we can step forward one, I can explain the  
18 implications of that.

19 Q. What are you showing on the left versus the right here?

20 A. This on the right is '720, Claim 13, the claim we just  
21 went through and invalidated, all but the last claim element  
22 about integrated with a mobile communications device. So  
23 basically all the major moving parts, all the limitations of  
24 Claim 3 are color coded -- recall them.

25 And over in Claim 32 of the '221 patent, you'll see a

1 mapping -- a direct mapping of the color coding, all the way  
2 down to the last requirement.

3 And, in fact, when I analyzed the comparison between  
4 these two claims, it was my conclusion that all of the color  
5 codings you see in Claim 32 map directly to the similar  
6 colors in Claim 13. In other words, they have the same  
7 requirements.

8 And if we could step forward, please.

9 Q. And why have you added checkmarks?

10 A. So the result of the claim elements -- the preamble and  
11 claim element requirements of Claim 32 being the same as  
12 those in '720, Claim 13, every element I found in Claim 13 of  
13 the '720 patent that compares to the similar element of Claim  
14 32 makes every one of these elements in 32 invalid, and I've  
15 checked them all off accordingly.

16 Q. So you're relying on the same corresponding prior art  
17 that you just taught us?

18 A. That is correct.

19 Q. All right. Can we turn to this last claim requirement  
20 then?

21 A. Yeah -- yes.

22 Q. And you've highlighted that at the bottom?

23 A. Yes. Right.

24 Q. And what are you depicting here, sir?

25 A. So there was one claim element that was different than

1 the previous Claim 13 of the '720 patent. And I'll just read  
2 it. This is code to retrieve from the data supplier an  
3 output to a user-stored data identifier data and associated  
4 value data and use rule data. The simple translation of that  
5 is present to a user what the content item is -- that's an  
6 identifier -- value data -- what it costs -- and use rule  
7 data -- what are the conditions for access? It's that  
8 simple.

9 And so the first comparison that I'm showing is with the  
10 Gruse/IBM patent. And we're -- again, we're looking for  
11 identifier, cost, constraint.

12 And citing from Column 28, 19 through 26, of the  
13 Gruse/IBM patent. The end-user devices request authorization  
14 for the content based on store usage condition.

15 So the content will be identified that the consumer is  
16 going to request.

17 And in this patent at Column 62, Lines 47 through 32 --  
18 62, excuse me, we find the familiar usage rule table. So I  
19 have a -- content identified, we're going to be looking for  
20 cost information. That exists in the price row at the  
21 bottom. Price 1, Price 2, Price 3. And use rule data --  
22 this entire table is full of usage conditions, according to  
23 Use Condition 1, 2, and 3.

24 So we find all the requirements of this claim element  
25 met in the Gruse/IBM patent.

1 Q. So you put a check for Gruse/IBM because, why, sir, just  
2 to be clear?

3 A. Yes.

4 Q. And you put that there why?

5 A. Because the additional citations that I just cited to in  
6 the Gruse/IBM patent satisfied the one remaining claim  
7 requirement that was not previously invalidated when we  
8 looked at the '720 patent, Claim 13, patent.

9 Q. Well, let's move on. And why have you checked the IBM  
10 System?

11 A. Because the IBM system, when I went through the '720  
12 patent, Claim 13, patent, you'll recall that I also addressed  
13 that. The same citations that I just provided for the  
14 Gruse/IBM patent satisfy the IBM system patent because the  
15 IBM System patent includes the Gruse/IBM patent.

16 Q. What are you showing here, sir?

17 A. The next invalidating reference is the Stefik/Xerox  
18 patent. Again, we're looking for an identifier, a value, the  
19 cost, and a user rule. Stefik/Xerox explains at Column 18,  
20 Lines 33 through 38, the specifications components 1452 are  
21 used to specify conditions which must be satisfied prior to  
22 the right being exercised or to designate various  
23 transaction-related parameters.

24 In the currently preferred embodiment, these  
25 specifications include copy count, fees, and incentives,

1 time, access and security, and control. So -- I'm sorry,  
2 these -- these are use rule conditions or usage conditions  
3 for the types of content that the Stefik/Xerox patent  
4 provides controls over, and it's in Figure 14 that it's  
5 referring to.

6 Q. Thank you, sir. So what should we do for the  
7 combination of Stefik/Xerox and Poggio/Sun?

8 A. We should check that off.

9 Q. Because?

10 A. Because that claim element is satisfied, therefor  
11 invalidating Claim 32 in light of Stefik/Xerox and  
12 Poggio/Sun.

13 Q. Let's move on to the next combination which is  
14 Ginter/InterTrust combined with Poggio/Sun. Again, focusing  
15 on that final limitation, what do you show here, sir?

16 A. Citation from the Ginter/InterTrust patent, Figure 72 D,  
17 pretty simple this time around. Property is the  
18 identification of the content. Cost per unit is the price.  
19 And the type is the usage control element.

20 Q. So is this limitation satisfied?

21 A. Yes.

22 Q. What would you like to do for that Ginter/InterTrust  
23 plus Poggio/Sun box?

24 A. Put a check there, please.

25 Q. All right. And then finally, we have Ansell/Liquid

1 Audio combined with Poggio/Sun?

2 A. Yes.

3 Q. What are you showing here?

4 A. So this time we need to go through, once again, Claim 32  
5 because the particular combination didn't meet all of the --  
6 or didn't map directly with this with reference to the '720  
7 Claim 13. So, once again, we'll do the walk-through.

8 Q. Okay. So for the preamble, what are you depicting?

9 A. We're, once again, of course, dealing with the data  
10 access terminal for retrieving data. And the Ansell/Liquid  
11 Audio patent at Column 4, 19 through 23, discloses that  
12 memory 104 can include any type of computer memory. And  
13 there's different kinds of memory described, fixed and  
14 removable storage devices.

15 So this the memory in the consumer unit which stores  
16 content, and there's actually a figure that should go on this  
17 page which appears in the next element. So I'll be able to  
18 close the loop on this.

19 Q. Okay. Is that first element satisfied, though, that  
20 preamble?

21 A. It will be satisfied as soon as I point out the next  
22 slide. Right -- thank you. Right there is memory 104 that  
23 the preamble was talking about, so that preamble is now  
24 satisfied.

25 Q. And now moving on to the second limitation, the first

1 interface, is that satisfied?

2 A. Yes. So what we're looking at is Figure 1 from the  
3 Ansell/Liquid Audio patent. The network access circuitry is  
4 the interface for communicating with the data supplier. Also  
5 adding support from Column 4, Lines 62 through 67.

6 Q. All right. Moving on to the next limitation, is that  
7 satisfied?

8 A. Yes, it is. Figure 2 from the patent, in connection  
9 with disclosure at Column 2, Lines 6 through 10, describes --  
10 you can see the term SPT interface 114. You may remember  
11 from Mr. Ansell's description yesterday, his invention, that  
12 he talked about something called an SPT, that stands for the  
13 secure files that his system manages, so this is the  
14 interface that loads the data carrier in his design.

15 Q. Moving to the next two limitations, the program store  
16 and the processor, are those limitations satisfied?

17 A. Yes, they are. I'm showing Figure 1 and Figure 5 from  
18 the Ansell/Liquid Audio patent, two examples of program store  
19 and processors -- player logic in Figure 5, and the processor  
20 from Figure 1. That's satisfied.

21 Q. Next requirement, is that satisfied?

22 A. Code to read payment data from the data carrier and to  
23 forward the payment data to a payment validation system.

24 Now, I'm bringing in the combination from Poggio/Sun and  
25 at -- citing from Figure 1 and Line 2 -- Column 2, excuse me,

1 Lines 32 through 36, as well as Lines 29 through 31.

2 The virtual vending machine provides vendors with a  
3 mechanism to market, distribute, and receive payment for the  
4 vendors' electronic data. It also discloses that various  
5 license options permit time period -- or time limited rental  
6 basis. And so this system, you recall that the information  
7 regarding payment is forwarded to the electronic banking  
8 network as payment data.

9 Q. Is that limitation satisfied, sir?

10 A. Yes, it is.

11 Q. Move on to the next two, code to receive payment, code  
12 responsive to the payment validation data. Are those  
13 disclosed?

14 A. So I'm citing from Poggio/Sun, Column 10, Lines 41  
15 through 54, and it has the same citation for the second one.

16 Code to receive payment validation from the payment  
17 validation system and then code responsive to that. So this  
18 is the -- the receipt of confirmation that payment took  
19 place, and then to respond -- to receive the data  
20 accordingly.

21 So in the Poggio/Sun application, the user would pay the  
22 specific funds to a virtual vending machine. That vending  
23 machine will -- will then re -- get in touch with the banking  
24 financial institution, the electronic banking network, and  
25 then would transmit the electronic data back to the client

1 computer after confirmation of payment data.

2 Q. And the quote below, you highlight, to receive the  
3 product upon receipt of a corresponding electronic payment.  
4 Why is that language important?

5 A. Well, that's the second blue element shown here, code  
6 responsive to the payment validation data to retrieve the  
7 data from the data supplier. And so this indicates that upon  
8 receipt of a corresponding electronic payment, the end-user  
9 device would respond to that by downloading data of the  
10 content.

11 Q. All right. Let's move to the next limitation --

12 THE COURT: Let's take a --

13 Q. (By Mr. Batchelder) What are you showing here?

14 THE COURT: -- let's take a pause here before we  
15 move to the next limitation. It's a good opportunity to take  
16 a recess.

17 Ladies and Gentlemen of the Jury: I'm going to  
18 excuse you for a brief recess. You may leave your notebooks  
19 in your chairs. Don't discuss the case, and follow my other  
20 instructions. We'll have you back in here 10 or 12 minutes  
21 and continue. But you're excused for recess at this time.

22 COURT SECURITY OFFICER: All rise for the jury.

23 (Jury out.)

24 THE COURT: All right. Counsel, we stand in  
25 recess.

1 (Recess.)

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 All right. Let's bring in the jury, please.

6 COURT SECURITY OFFICER: All rise for the jury.

7 (Jury in.)

8 THE COURT: Please be seated.

9 All right. Counsel, you may continue.

10 MR. BATCHELDER: Thank you, Your Honor.

11 Q. (By Mr. Batchelder) Mr. Wechselberger, we left off at  
12 Slide 169 here talking about the combination of Ancell/Liquid  
13 Audio, on the one hand, and Poggio/Sun Microsystems on the  
14 other; and we're on the second to last limitation, Claim 32  
15 of the '221 patent.

16 And would you show what's depicted here, please, or  
17 explain what's depicted here.

18 A. This element has to do with code that's responsive to  
19 the payment validation data to receive the access rule from  
20 the data supplier and to write that in the data carrier with  
21 conditions.

22 I'm citing to the Liquid Audio/Ansell patent, Figures 9  
23 and 5. And also to Column 11, Lines 11 through 17 for  
24 support of this.

25 The patent indicates in Figure 5 that player logic

1 interprets usage rules and use conditions.

2       There are three different types, Type 904, 906, and 908,  
3 as examples, defines what those are and talks about  
4 restrictions in this patent -- usually controls are called  
5 restrictions -- at the citation for Figure 9.

6       And these conditions are stored in the memory 104 unit  
7 that I showed earlier with the preamble. So this item is  
8 satisfied.

9 Q. This element is met?

10 A. Yes.

11 Q. All right. And why is there dependency on the amount of  
12 payment?

13 A. Dependent amount of payment. Support at Column 11,  
14 Lines 16 through 18. The header can include a number of  
15 different restrictions -- those are those numbers I just  
16 mentioned -- each of which includes a restriction type field,  
17 restriction data field and a state 908.

18 Q. All right. And you referred here to a specified amount  
19 of funds.

20 A. Yes.

21 Q. That's at Column 10, Lines 41 through 54?

22 A. Yes. Additional support, for instance, the virtual  
23 vending machine could request that the requesting user pay at  
24 a specified payment of funds. Further support for dependent  
25 amount of payment.

1 Q. Let's move to the final limitation. What are you  
2 disclosing here, sir?

3 A. Code to receive from the data supplier. This is the  
4 data identifier, value, and use rule. Poggio/Sun, Column 10,  
5 Lines 41 through 54.

6 Pay at a specified amount of funds upon receipt of  
7 confirmation and transmit the electronic data to the client  
8 computer.

9 Q. Have we been through all the limitations, sir?

10 A. Yes, sir.

11 Q. Are they all met?

12 A. Yes.

13 Q. Should we add another checkmark?

14 A. Yes.

15 Q. How many do you have?

16 A. Five.

17 Q. How many do you need to invalidate?

18 A. One.

19 Q. Let's move to the next claim, Claim 26 of the '772  
20 patent. Why do you start with gray checkmarks on the left?

21 A. The elements with gray checkmarks are code -- or excuse  
22 me -- are elements we've already looked at and invalidated  
23 through the testimony that I've provided up to this point.

24 So we can check those off and don't need to deal with  
25 them further.

1 Q. All right. And what have you inserted in the upper  
2 right-hand corner here, sir?

3 A. So there's a lot of parts to this claim. You'll see  
4 I've color coded them red, pink, green, et cetera. And  
5 they're categorized in categories of hardware, browsing, and  
6 shopping, payment for content -- we've already checked off;  
7 those are those gray checkmarks -- enforcing use rules, use  
8 status data, and user selection and playback.

9 So from a logical approach, I'll follow that -- those  
10 categories as we go forward and invalidate each claim  
11 element.

12 Q. All right. So let's start with the hardware, shall we?

13 A. Yes.

14 Q. All right. What are you showing here for the hardware?

15 A. The preamble is: A handheld multimedia terminal for  
16 retrieving and accessing protected content.

17 The first invalidating reference is Gruse/IBM in  
18 conjunction with Puhl/Motorola. Citing from the Gruse/IBM  
19 patent, Figure 6, and Column 5, Lines 47 through 51, we have  
20 the end-user devices from Figure 6 -- we've used that several  
21 times -- and customized players of a variety of devices, such  
22 as handheld devices.

23 This element is satisfied.

24 Q. All right. What are you showing here?

25 A. This is from the Puhl/Motorola patent. Recall, that's a

1 cell phone implementation with a wireless network. It's from  
2 Figure 4. Support, Line -- Column 8, Lines 30 through 34.

3 This is satisfied.

4 Q. All right. And what are you showing here for the IBM  
5 system?

6 A. One additional element -- or one additional reference is  
7 the IBM system. And now we've seen the portable handheld  
8 Sony Walkman device, as well as the disclosure of the cell  
9 phone audio player from Defendant's Exhibit 31. And a  
10 Walkman, of course, is Defendant's Exhibit 44.

11 Q. All right. And what you are showing here, sir?

12 A. Wireless interface configured to interface with a  
13 wireless network is the next element. Citing from Gruse/IBM,  
14 Column 9, Lines 40 to 43, talks about a wireless  
15 communication network.

16 Figure 4 from Puhl/Motorola talks about a wireless  
17 gateway. And additional support in Puhl/Motorola, Column 8,  
18 Lines 30 to 34.

19 This element is satisfied.

20 Q. Move on to the next one. What are you showing here?

21 A. This is non-volatile memory to store multimedia content.  
22 Citing to Gruse/IBM, Figure 1D; also support of Column 9,  
23 Lines 38 to 52. There's that data carrier that I pointed out  
24 earlier inside the end user appliance of Gruse/IBM.

25 Q. Okay. The next limitations, what are you showing here?

1 A. So we're down now to the user interface and a display.  
2 Gruse/IBM disclosure at Column 92, 1 through 25 talks about  
3 various buttons that exist for the end user interface on the  
4 appliance.

5 Also from that patent, Column 60, Lines 24 through 29,  
6 it discloses that content types could be those that require  
7 video or movies. So that would meet the display requirement  
8 of this element, the last -- the second element.

9 Q. Okay. And what is this device from this IBM system?  
10 How does it play in?

11 A. The Sony Walkman device that I'm holding has buttons on  
12 its side -- on the side for user interface and control.

13 There's also a screen, which is a little display.  
14 So it meets both of these claim elements.

15 Q. All right. What are you depicting here, sir? You've  
16 checked the hardware off?

17 A. Checked -- I'm sorry. Yes, upper left side. And that  
18 was the hardware part of these claim elements. Checked that  
19 off, and next we'll talk about the browsing and shopping  
20 claim requirements.

21 Q. All right. Those are color coded in purple?

22 A. Purple with some highlights. Code to request identifier  
23 data; code to receive identifier data.

24 Support, Gruse/IBM patent, Column 73, Lines 50 through  
25 54, and Column 28, 19 through 26. These claim elements

1 basically say to the data supplier, show me what you have,  
2 and it -- the unit receives what you have.

3 This is satisfied.

4 Q. Move on to the next ones. What are you showing here?

5 A. Code to request content information; code to receive  
6 content information.

7 Once the device shows you what you have, the user can  
8 then say, tell me more information about an item, a  
9 particular content item, and then they'll receive that.

10 This is supported by the IBM/Gruse patent -- Gruse/IBM  
11 patent at Column 62, Lines 47 through 62. That's the table.  
12 Also Column 28, 19 through 26.

13 This is satisfied.

14 Q. All right. Should we move on to the enforcing use rules  
15 and use status data?

16 A. Yes.

17 Q. All right. What are you showing here, sir?

18 A. So we have three elements here. This thing talks  
19 about -- this patent talks about a second user selection.  
20 That assumes now that the content has been downloaded.

21 And then the elements talk about accessing content  
22 according to the retrieved multimedia content, whether access  
23 is permitted. Citation satisfying these requirements are  
24 from Gruse/IBM at Column 10, Lines 43 through 50, and Column  
25 23, Lines 33 -- 39 through 41.

1 Q. All right. We just checked off all the enforcing  
2 elements?

3 A. That's right.

4 Q. Should we move on to user selection and playback?

5 A. Yes.

6 Q. All right. What are you depicting here, sir?

7 A. User interface is the way you interface with the end  
8 user device to be able to select a content available for  
9 retrieving and then to make a second selection to select it  
10 once you've retrieved it.

11 The Gruse/IBM patent discloses these requirements using  
12 the control panel shown in Figure 15A, and accompanying  
13 support at Column 88, Lines 42 through 46.

14 Q. And --

15 A. Also -- excuse me --

16 Q. Please.

17 A. Also, the IBM system patent, these are the figures we  
18 saw earlier from Figure 14, downloading content from the  
19 Internet, and then once the content is in the player device,  
20 the selection and playback from a playlist as depicted in  
21 Figure 16. So the IBM system satisfies this.

22 Q. And what are you depicting here, sir?

23 A. So the last two claim elements: To enable user to  
24 access the selection and present it to the -- to the user is  
25 supported in Gruse/IBM at -- by Figure 15, the control panel,

1 Column 10, Lines 43 through 50, and Column 60, Lines 24  
2 through 29.

3 These claim elements are satisfied.

4 Q. All right. Have you now checked through each of the  
5 claim limitations in connection with Claim 26 of the '772?

6 A. Yes, I have.

7 And so these two citations going to the right-hand  
8 column shows that I have invalidated this claim in light of  
9 the combination of Gruse/IBM and Puhl/Motorola and the IBM  
10 system.

11 Q. All right. Should we move on to the combination of  
12 Stefik/Xerox and Poggio/Sun Microsystems?

13 A. Yes.

14 Using the same color-coding approach, we start out with  
15 the handheld multimedia terminal.

16 Stefik/Xerox patent at Column 15, Lines 25 through 28  
17 talks about handheld repositories. Again, in the  
18 Stefik/Xerox patent, the repositories are also handheld --  
19 are also end-user consumer devices.

20 Q. And what are you depicting here, sir?

21 A. So for the wireless network, interface configuration  
22 requirement, Stefik/Xerox patent at Column 1, 24 through 28.  
23 It tells us the transmission of digital works over networks  
24 is commonplace, a general statement.

25 In Poggio/Sun, Column 4, 15 through 20: The present

1 invention is not limited to the use of the Internet as other  
2 types of communications connections can be used. And  
3 wireless was well-known as an Internet medium.

4 Q. Staying with hardware, what comes next?

5 A. Non-volatile memory to store multimedia content. We've  
6 seen Figure 12 of Stefik/Xerox, and in particular, in the  
7 data storage element 1207 is content storage 1204.

8 That satisfies that claim element.

9 Additional support in Stefik/Xerox is shown at Column  
10 14, Lines 28 through 32.

11 This item is met.

12 Q. And moving on to the final hardware limitations, what do  
13 you show here?

14 A. These are user interface to allow a user to select in a  
15 display for showing it to the user, the content. Support,  
16 Column 16, Lines 42 through 46, Figure 4B.

17 This is the Stefik/Xerox patent. Figure 4B shows the  
18 display engine. That's a display device. And final support  
19 is in Stefik/Xerox at Column 8, 63 through 67.

20 This satisfies -- these citations satisfy these claim  
21 elements.

22 Q. All right. Are all the hardware requirements satisfied?

23 A. Yes, sir.

24 Q. Shall we move on to browsing and shopping?

25 A. Yes.

1 Q. Please do.

2 A. These two claim elements: Code to request identifier  
3 data; code to receive identifier data. It's supported by the  
4 Stefik/Xerox patent at Column 38, Lines 65 through 67, which  
5 describes a request for information about digital works.

6 Q. Are they satisfied?

7 A. Yes.

8 Q. What's this?

9 A. Content information, request content information via  
10 wireless interface and to receive content information.

11 This is satisfied in Stefik/Xerox at Column 38, Lines 65  
12 through 67; also 39, 5 through 11. Descriptions of the works  
13 and different choices of billing.

14 Q. All right. And the final browsing and shopping  
15 requirement?

16 A. Code to present the information to the user is satisfied  
17 by Stefik/Xerox at Column 8, 65 through 67, and 39, Lines 5  
18 to 11.

19 Q. All right. Have we now satisfied all the requirements  
20 for browsing and shopping?

21 A. Yes.

22 Q. Should we move on to enforcing use rules and use status  
23 data?

24 A. Yes.

25 Q. What do you show here?

1 A. Three elements for receiving a second user selection.  
2 Code to read status data, use status data, and then code to  
3 evaluate that.

4 This brings in -- oh, I'm still -- sorry -- still in the  
5 Stefik patent itself, reflecting on the animation where the  
6 usage rights were checked in the picture above with the  
7 support for these claim elements given at Column 30, Lines 44  
8 through 47, and Column 7, 24 through 30 -- through 26.

9 Q. And that's in the Stefik/Xerox patent?

10 A. Yes, sir.

11 Q. All right. Have we now met the requirements of the  
12 enforcing use rules and use status data?

13 A. Yes.

14 Q. Should we move on to user selection and playback?

15 A. Yes, sir.

16 Q. All right. What do you show here, sir?

17 A. These two first claim elements, content available for  
18 retrieving and then a second selection for information  
19 operable to enable a user to make a second user selection.

20 This is supported in the Stefik/Xerox patent at Column  
21 16, Lines 42 through 46, talks about the repository user  
22 interface to invoke transactions to gain access to a digital  
23 work.

24 This is satisfied.

25 Q. What comes next?

1 A. Again, dealing with the user interface to access the  
2 selection and to present the information to the user is  
3 supported in the Stefik/Xerox patent at Column 16, Lines 61  
4 through 65, and Column 19, Lines 51 through 55.

5 Q. All right. Have you now stepped through every category  
6 of requirements for Claim 26 of the '772 patent?

7 A. Yes, I have.

8 Q. And what should we do?

9 A. Put a check in the third box down indicating that the  
10 evidence I have provided invalidates the asserted claim in  
11 light of the combination of Stefik/Xerox and Poggio/Sun.

12 Q. All right. Let's move on to the combination of  
13 Ginter/InterTrust, on the one hand, and Poggio/Sun  
14 Microsystems on the other.

15 What are you showing here, sir?

16 A. Okay. Continuing the examination, back up to the top,  
17 the preamble, and the first requirement for a wireless  
18 interface is disclosed in the Ginter/InterTrust patent at  
19 Column 34, Lines 1 through 6, and also by the support  
20 provided in Column 233, Lines 53 through 57.

21 Q. How about that next hardware requirement?

22 A. Non-volatile memory in the user device, secondary  
23 storage, as shown in Figure 8 of the Ginter/InterTrust  
24 patent, as described at Column 62 through -- Line 63 through  
25 67, disclosed the non-volatile memory.

1           So that one's there.

2       Q.    And the next hardware requirement?

3       A.    The user interface to select and play and a display for  
4   showing.  In Figure 8, I've highlighted the keyboard to allow  
5   the selection, and it has a display element.

6           So these elements are satisfied.

7       Q.    The final two?

8       A.    Yes.

9       Q.    All right.  You've satisfied the hardware requirements?

10      A.    Yes, sir.

11      Q.    Move on to browsing and shopping?

12      A.    Yes.

13      Q.    What are you showing here?

14      A.    Okay.  These elements are all associated with getting  
15   identifier data for content out for retrieving to receive it,  
16   to get information about that content item, and to -- and to  
17   present -- to receive the information and to present the  
18   information.  Sounds like a lot of steps, but they're really  
19   quite trivial and readily found in the Ginter/InterTrust  
20   patent at Figure 72D.  So these are all satisfied.

21      Q.    So you've satisfied browsing and shopping?

22      A.    Yes, sir.

23      Q.    Can we move on to enforcing use rules and use status  
24   data?

25      A.    Yes.

1 Q. What do you show?

2 A. Three more items in the use rules: Use status data  
3 area; user selection, selecting one or more content of items;  
4 then usage rules pertaining to that item and then whether  
5 access is permitted. This is Figure 3 from the  
6 Ginter/InterTrust patent where I went through the usage  
7 control functions, the go/not go metering, and that is  
8 supported in the Ginter patent -- Ginter/InterTrust patent at  
9 Column 56, Lines 25 through 36.

10 Q. Have you covered all the requirements of Claim 26 for  
11 enforcing use rules and use status data?

12 A. Yes.

13 Q. Let's move on to the final set, which is user selection  
14 and playback.

15 A. Okay.

16 Q. What do you show here, sir?

17 A. User interfaces. Again, operable to enable a user to  
18 make selections of content and then select a content for  
19 play. The similar table from the Ginter/InterTrust patent is  
20 shown with support at Column 238, Lines 50 through 55.

21 Q. Are those requirements met?

22 A. Yes.

23 Q. And what else are you using as support?

24 A. In additional support, Ginter patent, Column 238, Lines  
25 50 through 55.

1 Q. All right. What comes next under user selection and  
2 playback?

3 A. Enable a user to access said user selection, so the  
4 content is in the unit. You want to be able to select it and  
5 play it.

6 The Ginter/InterTrust patent discloses that can be done  
7 at Column 58, Lines 33 through 34. Content may be supplied  
8 to the user, and Figure 3 tells us the conditions for  
9 accessing that content. This is satisfied.

10 Q. And the final user selection and playback requirement?

11 A. This simply says once you select it, display it.

12 Q. Is that met?

13 A. Excuse me?

14 Q. Is that met here?

15 A. That is met here. Ginter/InterTrust patent, Column 58,  
16 Lines 33 through 34, and 58, 57 through 62.

17 Q. All right, sir. Have you now stepped through every  
18 category of requirements for Claim 26 of the '772 patent in  
19 connection with the combination of the Ginter/InterTrust  
20 patent and the Poggio/Sun reference?

21 A. Yes.

22 Q. And what should we do?

23 A. Put a check on the fourth box.

24 Q. All right. Let's move on to the final one, the  
25 combination of the Ansell/Liquid Audio, the Poggio/Sun

1     Microsystems, and the Puhl/Motorola.

2     A.    Yes.

3     Q.    What are you showing here for the hardware?

4     A.    Preamble, a handheld multimedia terminal.  Ansell/Liquid  
5     Audio, Figure 1 shows the computer system.  There's a little  
6     portable device in the lower right-hand corner 150.  From  
7     Puhl/Motorola, Figure 4, the mobile phone operating in a  
8     wireless network.  So we can move on, check that one off.

9     Q.    That satisfied?

10    A.    Yes.

11    Q.    What's the next hardware requirement?

12    A.    For the -- for there to be a wireless interface  
13    configured with the wireless network, the same pictures that  
14    I just talked about for the preamble, this time highlighting  
15    in Figure 1 of Ansell/Liquid the access to the outside world,  
16    the -- the network access circuitry box, 160, I believe it  
17    is.  And then Figure 4 from Puhl/Motorola showing the  
18    wireless interface highlighted in red.

19    Q.    So you've got Ansell/Liquid Audio on the top and the  
20    Puhl/Motorola, Figure 4, on the bottom?

21    A.    Yes.

22    Q.    All right.  What about the next hardware requirement?

23    A.    This simply speaks to the non-volatile memory in the  
24    handheld multimedia unit, and that is satisfied by the red  
25    box storage media in Ansell/Liquid Audio, Figure 5.

1 Q. What about the final two hardware requirements?

2 A. A user interface to select something to play and a  
3 display for showing it is readily apparent in Ansell/Liquid  
4 Audio, Figure 1.

5 Q. That's met, both of those?

6 A. Yes.

7 Q. All right. Browsing and shopping, should we move on to  
8 that?

9 A. Yes.

10 Q. What are you showing here?

11 A. Okay. Browsing, shopping, the same five pink items.  
12 Select an item, get information about it. Select content,  
13 get information. Select a specific content, get information.

14 So with the Ansell/Liquid Audio patent, Figure 1, we  
15 have the computer subsystem that runs all the code to perform  
16 the indicated requests and reception.

17 Move on, please. See if there's -- oh, back up.

18 So just to complete that, the code that runs on the  
19 processor, together with the memory associated with that,  
20 satisfies these claim elements because the -- they're  
21 basically asking for information about data to -- to  
22 retrieve, getting the information, selecting more information  
23 to -- to choose a specific song, and then receiving that  
24 information.

25 Q. All right. Should we move on to enforcing use rules and

1 use status data?

2 A. Yes.

3 Q. What are you showing here, sir?

4 A. So the triplet -- these three claim elements -- second  
5 user selection, selecting the -- the item retrieved, getting  
6 information about whether the access rules allow you to re --  
7 to review that content or see that content -- satisfied by  
8 Ansell/Liquid Audio at Column 13, Lines 11 through 15, as  
9 well as the information disclosed by that patent, Figure 9  
10 and Figure -- Figure 5.

11 Q. Have you satisfied all the enforcing use rules and use  
12 status data requirements of Claim 26 for the  
13 Ginter/InterTrust -- I'm sorry for the Ansell/Liquid Audio  
14 reference?

15 A. Yes.

16 Q. All right. Should we move on to the user selection and  
17 playback?

18 A. Yes.

19 Q. What are you showing here?

20 A. These are the user control functions. There is  
21 Ansell/Liquid Audio with the keyboard and the display. So  
22 the user interface requirements are satisfied.

23 Q. What's next?

24 A. Same functions for this claim element are satisfied by  
25 the computer and display -- computer keyboard and display.

1 Q. And the last two user selection and playback  
2 requirements?

3 A. Likewise, these are satisfied by the same two components  
4 of Figure 1.

5 Q. All of these are met?

6 A. Yes.

7 Q. All right. Can we now check that box for Ansell/Liquid  
8 Audio?

9 A. That's correct.

10 Q. All right. Let's move on. And what are you showing  
11 here, sir?

12 A. This is the last of the asserted claims, '772 patent,  
13 Claim 32. It is about data access terminals. And you'll see  
14 a number of gray checks all the way down the left-hand side.

15 The color coding that I'm showing here is the same as  
16 the groupings that I just went through for the previous Claim  
17 26. These claim elements and requirements are the same as  
18 what we just looked at in all respects, excepting for the  
19 last claim element of Dependent Claim 32, so I've already  
20 checked them off as being shown to be invalid.

21 Q. What have you added to the right column?

22 A. The identification of each of the color codings for  
23 hardware, browsing and shopping, payment for content,  
24 enforcing use rules/status data, and mobile communications  
25 device, just to remind us what those categories are for.

1 Q. All right. And what are you depicting here in Slide  
2 235?

3 A. Since all of Claim 32 is -- all the claim elements have  
4 already been shown to be invalid, with the exception of one,  
5 that is the -- the last limitation of Claim 32, we have to --  
6 I have to show that that is also met in the prior art. That  
7 claim requirement is: Wherein said data access terminal is  
8 integrated with a mobile communication device and an  
9 audio/video player.

10 Q. So is that disclosed?

11 A. That is disclosed, starting with the Gruse/IBM patent  
12 in connect -- conjunction with the Puhl/Motorola patent. The  
13 Gruse/IBM patent says -- at Column 5, Lines 47 through 51,  
14 talks about customized devices in a variety of devices, such  
15 as handheld devices.

16 So that, in combination with what is disclosed in  
17 Figure 4 of Puhl/Motorola, where we find a handheld cellular  
18 phone. This element is satisfied.

19 Q. And what are you depicting here in Slide 236?

20 A. This brings in that the IBM system also satisfies this  
21 last claim -- claim element because we have the disclosure by  
22 NTT DoCoMo Company about the mobile phone/audio player which  
23 they've described as a cell phone and audio player. So that  
24 satisfies this claim element. That's Defense Exhibit 31.

25 Q. All right. What should we do next?

1 A. We check off the top two boxes and then --

2 Q. If I could ask you, sir, is it then your opinion that  
3 Claim 32 of the '772 patent is rendered invalid by the  
4 combination of Gruse/IBM and Puhl/Motorola?

5 A. Yes, it's invalid by either one and both of those.

6 Q. And by the IBM System?

7 A. And by the IBM system.

8 Q. All right.

9 A. I'm sorry, just to be clear, by the combination of  
10 Gruse/IBM and Motorola, as well as invalidated by the IBM  
11 system.

12 Q. Let's move on to that final combination. It's the  
13 combination of the Ansell/Liquid Audio reference, Poggio/Sun  
14 Microsystems reference, and the Puhl/Motorola reference.

15 What are you showing here, sir?

16 A. Puhl/Motorola reference, Citation, Column 8, Lines 30 to  
17 34, talks about a server coupleable to the wireless gateway,  
18 delivering content to the wireless device, shown in Figure 4  
19 of that Puhl/Motorola patent.

20 So we have already satisfied that claim element, and  
21 that box can be checked.

22 Q. All the requirements are met by that final combination?

23 A. Yes, sir.

24 Q. All right, sir. What should I do next?

25 A. We should check off the second line. I have

1 demonstrated that all of the asserted claims are invalid in  
2 lieu of the prior art.

3 Q. All right, sir. Secondary considerations. They're up  
4 here on this slide. What -- what is this a reference to?

5 A. So when making conclusions and opinions about whether  
6 patent claims are obvious or not, there is a category -- a --  
7 a collection of categories called secondary considerations.

8 And these are extra things to look at besides just the  
9 prior art. And I've listed five of those -- commercial  
10 success, long-felt need, and failure of others, copying,  
11 industry praise, and acceptance, or unexpected results. And  
12 so --

13 Q. Sir, let me -- let me just ask you. Have you analyzed  
14 these secondary considerations?

15 A. Yes, sir.

16 Q. In detail?

17 A. Yes.

18 Q. And do any of them support a conclusion of  
19 non-obviousness, in your opinion?

20 A. In my opinion, none of these factors would support a  
21 conclusion of non-obviousness.

22 MR. BATCHELDER: Can we pull up Slide 260, please?

23 Q. (By Mr. Batchelder) You refer here to a lack of written  
24 description?

25 A. Yes. I also have an opinion that Claim 26 of the '772

1 patent is invalid for lack of a written description. This is  
2 a different category than secondary considerations.

3 Q. All right. And what do you refer to here on this next  
4 Slide 261?

5 A. Well, the patent statute gives us an understanding of  
6 what lack of written description is, and it says that a  
7 patent specification shall contain a written description of  
8 the invention; and it should be full, clear, concise, and  
9 exact. And also that the full scope of the claimed  
10 invention, as finally claimed and that the inventor actually  
11 had possession of the full scope by the filing date of the  
12 original application. So in simple words, the patent  
13 specification should describe the claim.

14 Q. And what are you showing here on Slide 262 in connection  
15 with that lack of written description?

16 A. Well, we just looked at '772, Claim 6, a moment ago.

17 Q. Claim 26?

18 A. Claim 26.

19 Q. Thank you.

20 A. I'm sorry. And that claim requires a handheld  
21 multimedia terminal for retrieving and accessing protected  
22 content, and then it goes on to have additional elements  
23 which we've already looked at, to enable the user to access  
24 and present information to the user.

25 And the issue -- the problem is -- in the next slide --

1 that the Smartflash specification doesn't disclose a terminal  
2 that plays content. Earlier, I showed Figure 4 several times  
3 in the patent, and Figure 1. Figure 1 is the data access  
4 device. That is the player in the Smartflash architecture.

5 The overall system architecture I spent a lot of time  
6 talking about. And terminal is this T unit, Item No. 40. In  
7 all instances, the function of a terminal in the Smartflash  
8 system is to receive data from a data provider or a data  
9 supplier and write it into the data carrier in 30 -- Item 30.

10 This is the only function that's ever disclosed in this  
11 patent about what the function of a terminal is. When it  
12 comes time to play content, there's another device that has  
13 been explicitly described, and it's called a data access  
14 device.

15 Nowhere in the specification does the Smartflash  
16 specification indicate that a terminal has any other function  
17 than writing data to a data carrier.

18 And after many efforts on my part to justify claim --  
19 the claim of the '772 patent where it talks about a terminal  
20 playing content, was I able to find over disclosure of that  
21 function. And so that is a -- my conclusion that there's no  
22 written description of a terminal in this patent that plays  
23 content.

24 MR. BATCHELDER: Can we see Slide 265, please?

25 Q. (By Mr. Batchelder) Would you please provide now, sir,

1 a summary of your opinions?

2 A. The summary of my opinions in total are that all the  
3 asserted claims are not infringed by the accused products,  
4 that none of the asserted claims are valid, in light of the  
5 prior art, and that Claim 26 of the '772 patent is also  
6 invalid because it fails the written description requirement.

7 Q. Thank you, Mr. Wechselberger.

8 MR. BATCHELDER: Your Honor, I pass the witness.

9 THE COURT: Cross-examination of the witness by the  
10 Plaintiff.

11 MR. CALDWELL: Your Honor, may I take a minute to  
12 get some foam boards organized and things like that?

13 THE COURT: Proceed.

14 (Pause in proceedings.)

15 THE COURT: Are you ready, Counsel?

16 MR. CALDWELL: Yes. Thank you.

17 THE COURT: Proceed.

18 CROSS-EXAMINATION

19 BY MR. CALDWELL:

20 Q. Mr. Wechselberger, you understand that it is Apple's  
21 burden to prove invalidity of all claims by clear and  
22 convincing evidence?

23 A. Yes, sir.

24 Q. And you were asked a question earlier about how many  
25 checks do I -- how many blue checks do I need on the screen

1 in order to do -- in order to invalidate a claim. Do you  
2 recall that?

3 A. Well, I had a number of checks, yes.

4 Q. I'm asking, do you recall the question about how many  
5 checks -- how many blue checks you needed on the screen to  
6 invalidate a claim?

7 A. Okay. The blue checks, yes. One.

8 Q. And that's because that blue check, you're lumping  
9 together an entire claim, correct?

10 A. Yes.

11 Q. You have to find every element from the claim, either in  
12 a single reference or in an elected combination of  
13 references, in order to invalidate the claim, correct?

14 A. Yes.

15 Q. Do you believe that the pile of references, one system,  
16 six or so different patents, all those combinations that you  
17 presented rises to the level of clear and convincing evidence  
18 necessary to invalidate these patents?

19 A. Yeah, absolutely.

20 Q. Sir, have you ever heard the expression, "hit me with  
21 your best shot"?

22 A. Say again, please?

23 Q. Have you ever heard the expression, "hit me with your  
24 best shot"?

25 A. Yes.

1 Q. What would you say is the best one of those references?

2 A. They each bring different qualities and different  
3 degrees of complexity. Some are better than others,  
4 depending upon the audience.

5 For example, the Ginter/InterTrust and IBM/Stefiks are  
6 particularly complex. I believe they're both equally  
7 invalidating with the proper combination references, so I  
8 don't know that at this point in the overall examination that  
9 I provided that there's any one better than the other. And I  
10 think I indicated during my deposition that it kind of  
11 depends on your audience.

12 Q. For this jury trial, do you have a personal favorite  
13 reference or combination?

14 A. No, sir.

15 Q. I'm going to use the foam board, with the Court's  
16 permission; and will you then -- when I approach the foam  
17 board with the marker, tell me which anticipation references  
18 you've raised for each one of these patents?

19 MR. CALDWELL: May I approach, Your Honor?

20 THE COURT: You may.

21 Q. (By Mr. Caldwell) Sir, what anticipation references did  
22 you have for the '720 patent?

23 A. Gruse/IBM, I believe.

24 THE COURT: Counsel, given the acoustics in this  
25 courtroom, I'm going to ask you to use that handheld

1 microphone to make sure when you're away from the podium,  
2 there's no question with the jury hearing you.

3 MR. CALDWELL: Yes, sir. Thank you.

4 Q. (By Mr. Caldwell) Is that the only anticipation  
5 reference you had?

6 A. Yes, sir.

7 Q. Mr. Wechselberger --

8 A. I can't see that poster, by the way, excuse me.

9 Q. Is that better?

10 A. Yes, thank you.

11 Q. Mr. Wechselberger, what obviousness combinations did you  
12 have for the '720 patent? Do you know them off the top of  
13 your head?

14 A. No. I'd be happy to see the slides, or they can -- or  
15 they can recall the slides.

16 Q. However you have to --

17 A. I'm ready.

18 Q. Okay. Sir, please tell me what obviousness combinations  
19 have you had for the '720 patent.

20 A. IBM system.

21 Q. Yes, sir.

22 A. Stefik/Xerox in combination with Poggio/Sun.

23 Q. Is Stefik, S-t-e-f-i-k?

24 A. Yes.

25 Q. In combination with Poggio?

1 A. Poggio/Sun.

2 Q. In your report, you call it Poggio, not Poggio/Sun,  
3 correct?

4 A. We have instructions from the Court as to how to refer  
5 to these. I don't remember what I had in my report.

6 Q. I think we -- it's fair for us to refer to it by the  
7 name of the -- the patent name Poggio, correct?

8 A. His Honor has instructed otherwise today.

9 THE COURT: Refer to them by the name of the  
10 inventor and the assignee.

11 MR. CALDWELL: Yes, sir.

12 Q. (By Mr. Caldwell) And, Mr. Wechselberger, what other  
13 obviousness combinations do you have for the '720 patent?

14 A. The combination of Ginter/InterTrust and Poggio/Sun.

15 MR. CALDWELL: Your Honor, do I need to write the  
16 company names on here --

17 THE COURT: Counsel, you can abbreviate any way  
18 you want to --

19 MR. CALDWELL: Thank you.

20 THE COURT: -- but for the record, I'm trying to  
21 keep everything straight.

22 MR. CALDWELL: Yes, sir, I -- I appreciate that.

23 THE COURT: I -- I assume you understand our  
24 previous discussion of all this?

25 MR. CALDWELL: I certainly do.

1 THE COURT: Okay. Let's do it that way.

2 Q. (By Mr. Caldwell) And the one you just mentioned,  
3 Mr. Wechselberger, after Stefik and -- and Poggio was --

4 A. Was Ginter/InterTrust in combination with Poggio/Sun.

5 Q. Any other obviousness combinations for the '720, sir?

6 A. No.

7 Q. Mr. Wechselberger, what anticipation references do you  
8 have for the '221 patent?

9 A. I have no other anticipating references for '221 or  
10 '772.

11 Q. You mean no other anticipating references or no  
12 anticipating references?

13 A. No anticipating references.

14 Q. I can write none in those boxes, correct?

15 A. Yes. The top row is anticipation? Yes.

16 Q. Yes, sir.

17 A. I stand corrected, excuse me. I just found the right  
18 category of my slides. And for Claim (sic) '221, Claim 32,  
19 Gruse/IBM is an anticipating reference.

20 Q. Okay. While I've got the red marker, do you have any  
21 anticipation references on the '772 claim, sir?

22 A. I'll need to find the associated page for that. For  
23 '772, Claim 26, the answer is no, and that will be the case  
24 also for Claim 32.

25 Q. So I can write none in the box for the '772

1 anticipation, correct?

2 A. Yes.

3 Q. Mr. Wechselberger, what obviousness combinations do you  
4 have for at '221 patent?

5 A. IBM system.

6 Q. Yes, sir.

7 A. Stefik/Xerox, in combination with Poggio/Sun. The next  
8 one is Ginter/InterTrust, in combination with Poggio/Sun.

9 Q. Yes, sir.

10 A. And the last one is Ansell/Liquid Audio in combination  
11 with Poggio/Sun.

12 Q. Is that it, sir?

13 A. Yes.

14 Q. And what obviousness combinations did you identify for  
15 the '772, sir?

16 A. Claim 26 is Gruse/IBM, in combination with  
17 Puhl/Motorola.

18 Q. Yes, sir.

19 A. And the IBM system.

20 Q. Yes, sir.

21 A. And Stefik/Xerox -- Stefik/Xerox with -- in combination  
22 with Poggio/Sun.

23 Q. Yes, sir.

24 A. Ginter/InterTrust, in combination with Poggio/Sun.

25 Q. Any others?

1 A. Yes. The last combination is Ansell/Liquid Audio, in  
2 combination with Poggio/Sun and Puhl/Motorola.

3 Q. You combined two with Ansell on that one?

4 A. That's correct, Poggio/Sun and Puhl/Motorola.

5 Q. Did you select these combinations yourself, sir?

6 A. Yes.

7 MR. CALDWELL: Ms. Mayes, I don't know how to turn  
8 this off.

9 A. Well, I didn't do -- I did, but I did not do it in  
10 isolation, of course.

11 Q. (By Mr. Caldwell) Can we talk about the IBM system for a  
12 little bit?

13 A. Sure.

14 Q. You referred also to the Gruse patent, correct?

15 A. Yes.

16 Q. And you looked at the Gruse patent to get a lot of your  
17 information on how you believe the IBM system would work,  
18 correct?

19 A. For that portion of the IBM system, which relies upon  
20 the disclosure of the -- of the Gruse/IBM patent.

21 Q. And you talked about a public trial that was called  
22 Album Direct as part of Project Madison.

23 Do you remember that?

24 A. Yes.

25 Q. Did that system even secure content once it was

1 downloaded?

2 A. Did it encrypt content?

3 Q. Was the content -- was there a digital rights management  
4 on the content once it was downloaded?

5 A. The disclosures about it indicated that content was --  
6 was downloaded and implemented the EMMS aspects, which were  
7 lifted from the Gruse/IBM patent, and those things include  
8 usage conditions.

9 Q. And you identified watermarks as a usage condition  
10 earlier, correct?

11 A. I don't believe watermarks was included.

12 Q. Mr. Wechselberger, in the IBM Album Direct trial, was  
13 content protected by DRM when it was downloaded?

14 A. In the proof-of-concept trial?

15 Q. In the IBM Album Direct trial.

16 A. I just testified I don't believe that watermarking was  
17 actually implemented in that trial. It's disclosed in the  
18 patent, but I don't think that was one of the things that was  
19 done in the proof-of-concept system.

20 Q. I see. I misunderstood your testimony. My apologies.  
21 I want to know, was any digital rights management implemented  
22 in the IBM Album Direct trial, sir?

23 A. Well, certainly to the extent that a permanent purchase  
24 is allowed, that is a -- that is a part of DRM controls, yes.

25 Q. Because the purchase was permanent?

1 A. Yes, sir.

2 Q. Even if -- if I purchase a compact disk, that's a  
3 permanent purchase, correct?

4 A. Yes.

5 Q. Does that mean the music on it has digital rights  
6 management on it?

7 A. No. It means, if you're in a system which implements  
8 DRM, one of the options is a permanent purchase.

9 Q. Do you know who Jeffrey Lotspiech is?

10 A. No.

11 Q. Do you remember relying on Mr. Lotspiech's information  
12 in your report?

13 A. I don't remember the name. I'm sorry.

14 Q. Did you remember relying on anyone to describe the IBM  
15 system in your report, sir?

16 A. I gave the evidence that I primarily relied upon today  
17 in my testimony.

18 Q. Mr. Wechselberger, I'm asking, do you remember relying  
19 on anybody for evidence of the IBM system when you prepared  
20 your report?

21 A. I don't remember today all of the names, with respect to  
22 that, that are in my report.

23 Q. Mr. Wechselberger, Apple's lawyers wrote 50 to  
24 70 percent of your invalidity report, didn't they?

25 A. I testified to that earlier today, that I documented

1 my -- my opinions, and they helped me with the typing. That  
2 percentage probably is correct.

3 Q. That's what you told us in your deposition, isn't it?

4 A. I don't remember; but as I sit here today, I agree with  
5 you.

6 Q. Same for your infringement report -- your  
7 non-infringement report, correct?

8 A. Probably.

9 Q. So why did you rely on Mr. Jeffrey Lotspiech's  
10 information in your -- in your report?

11 A. I could answer that question if you'd like -- if -- if  
12 you would like me to reference the report so I can remember  
13 what I said about him. As I -- like I told you, I don't  
14 remember that name today.

15 Q. Does it ring a bell if I explain that Mr. Lotspiech is  
16 one of the engineers who was at IBM that worked on the EMMS  
17 system?

18 A. If you assert that to me, I'm willing to go forward.

19 Q. Did you know that he's another fact witness that Apple  
20 has hired up in this matter?

21 A. No, sir.

22 Q. Have you ever had a chance to talk to him and figure out  
23 how the system works, sir?

24 A. I have not talked to that person.

25 Q. Do you believe that Sony player that's sitting right in

1 front of you is part of the IBM system?

2 A. Yes.

3 Q. Did IBM ever configure the system to where you could put  
4 songs from the EMMS system on the Sony player?

5 A. I don't believe so. That's immaterial.

6 Q. Earlier, you also showed some -- some slides suggesting  
7 that that player would be the end-user device in the IBM EMMS  
8 system, didn't you?

9 A. I did not attempt to represent that this player worked  
10 in the system. My representation was that it was announced  
11 and disclosed for what it would be, in conjunction with the  
12 overall information disclosed within the IBM system.

13 Q. Do you recall that in the IBM -- the -- I'll just start  
14 over.

15 You recall that in the Gruse patent, there was a variety  
16 of boxes, and one of them is called the end-user device,  
17 correct?

18 A. Yes. I remember, in the Gruse/IBM patent, that's  
19 disclosed.

20 Q. And would that player be the end-user device if it was  
21 in the Gruse system?

22 A. This player?

23 Q. Yes, sir.

24 A. Yes. Yes, it would be.

25 Q. Mr. Wechselberger, do you recognize Gruse patent Figure

1 6?

2 A. Yes, sir.

3 Q. And you used that to describe the IBM EMMS system,  
4 correct?

5 A. I -- I described that, yes, to reference the -- the  
6 component that is matched that Figure 6, because they were  
7 disclosed as part of the IBM system documentation, and that  
8 IBM system -- you're right, that was called -- they -- they  
9 referred to that as the EMMS system. So, yes, I referenced  
10 Figure 6 from the patent.

11 Q. Sir, in your testimony today, what did you point to on  
12 this figure as the place where the end-user device went to  
13 process a payment?

14 A. Well, I can't see it from here, but it's in the lower  
15 right-hand corner.

16 Q. Remember what it's called?

17 A. No.

18 Q. The clearinghouse?

19 A. Yes. That -- the -- yes, that's what it's called.

20 Q. Is that what you said in your report, sir?

21 A. Yes, it certainly is.

22 Q. Do you have a copy of your cross-exam binder?

23 A. Uh-huh.

24 THE COURT: Again, Mr. Wechselberger,  
25 non-verbalized responses are not acceptable.

1 THE WITNESS: I'm sorry, Your Honor.

2 THE COURT: Say yes or no. Don't say uh-huh.

3 A. Yes, I have it. This is what you just gave me?

4 Q. (By Mr. Caldwell) Yes, sir.

5 A. Okay.

6 Q. Mr. Wechselberger, in your invalidity report, can you  
7 find Paragraph 151?

8 And while you're doing that, sir, I'm going to circle  
9 the clearinghouse and identify that that's what you pointed  
10 to today, okay?

11 A. Sure.

12 Q. Have you found Paragraph 151, sir?

13 A. Yes.

14 Q. In Paragraph 1, you say, and I quote: Upon a selection,  
15 the consumer's end-user device interacts with the store,  
16 correct, which interacts with the credit card clearing  
17 organization?

18 A. That's correct.

19 Q. Now, is this clearinghouse that you've pointed to, sir,  
20 is that the store, sir?

21 A. No.

22 Q. Sir?

23 A. No.

24 Q. So in your report, you weren't pointing to the  
25 clearinghouse; you were pointing to the electronic digital

1 content store as the store, correct?

2 A. That's right.

3 Q. Was it your decision to change and point now to the  
4 clearinghouse?

5 A. What you have pointed out in Paragraph 151 is it starts  
6 off by saying the Gruse functions generally -- functions,  
7 generally as follows: This is a high-level summary to  
8 introduce the reader to Figure 6. What you find in the  
9 detail of the Gruse -- IBM/Gruse -- of the Gruse/IBM patent  
10 are further disclosures that the -- the connection between  
11 the user and the store house is the beginning of a  
12 transaction that ultimately ends up with financial  
13 finalization being the responsibility of the -- of the  
14 clearinghouse.

15 Q. In your --

16 A. That approval takes place on that item you circled, up  
17 in the lower -- if you circle that item at the lower  
18 right-hand corner.

19 Q. Sir, in your report you said, the user -- end-user  
20 device interacts with the store which interacts with a credit  
21 card clearing organization, correct?

22 A. That's correct.

23 Q. And you weren't pointing to the clearinghouse when you  
24 said that, were you, sir?

25 A. What is not written there, because I just testified that

1 this is a high-level description, I have very detailed  
2 invalidity charts that accompany this report. And also in  
3 the IBM/Gruse patent it describes the -- in full detail that  
4 the transaction smart card that goes to the user device  
5 contains information that when it turns to the clearinghouse,  
6 completes the financial validation. Those underlying details  
7 are not included in this high-level summary. They weren't  
8 intended to.

9 Q. Because when you summarized how Gruse works, rather than  
10 the simple transaction with the clearinghouse, you actually  
11 went through the sequence of steps that are described, right?

12 A. I don't understand the question.

13 Q. Well, do you understand, sir, that when an end-user  
14 device -- when there's a selection of content, that a message  
15 goes from the end-user device over to the electronic digital  
16 content store first?

17 A. Yes, that kicks it off.

18 Q. And then in response, the store sends a message back to  
19 the user device, correct?

20 A. Yes.

21 Q. What's that message called?

22 A. It's called a transaction SC.

23 Q. That's written right there in your report that you're  
24 looking at, correct?

25 A. Transaction secure containers, yes.

1 Q. At that point, does the user get the content?

2 A. No, sir.

3 Q. Because then you have another set of messages where the  
4 end-user device contacts the clearinghouse, correct?

5 A. That's right.

6 Q. What gets sent to the clearinghouse?

7 A. That's the order which contains the transaction  
8 information for the clearinghouse to do the final validation  
9 of the transaction.

10 Q. And then in response, does the clearinghouse send the  
11 content?

12 A. No, the clearinghouse does not.

13 Q. What does the clearinghouse send?

14 A. The clearinghouse sends payment validation data back to  
15 the end user, if it's approved.

16 Q. It doesn't say that in the patent that it sends payment  
17 validation data, does it?

18 A. In the context of the Smartflash patents, that's the  
19 elements I pointed to. The information in that is the result  
20 of approval of the payment process in this system. It does  
21 not have those literal words, I would agree with you on that,  
22 if that was your issue.

23 Q. The answer to my question was that it -- no, it does not  
24 send back -- it does not say it sends payment validation  
25 data?

1 A. Correct.

2 Q. It sends what's called a license SC, correct?

3 A. That's literally what it sends, yes.

4 Q. And the user still doesn't have the content right now,  
5 correct?

6 A. Correct.

7 Q. The user actually goes where to get the content?

8 A. To the content hosting site.

9 Q. Do you know what the user sends to the content hosting  
10 site?

11 A. I'd have to look to confirm, but I believe it's the box  
12 in the upper right-hand corner, the detail, the offer S --  
13 secure container detail that goes over -- all the  
14 communications in this system are with what are called SCs,  
15 secure containers.

16 Q. You believe that the end user sends the offer SC up to  
17 the content hosting site?

18 A. No, I take that back. There's an arrow missing from  
19 that box that doesn't define where it came from. There is  
20 another secure container that goes to the content hosting  
21 site to prove to that site that content should be downloaded.

22 Q. Okay. We just don't know the name of it, correct?

23 A. Correct.

24 Q. Now, finally, after the end-user device has contacted  
25 the content hosting site, does a user finally get the

1 content?

2 A. Yes, it's returned to the user.

3 Q. What's that called?

4 A. There's a secure container called content.

5 Q. Is it your position that that Sony device that you  
6 identified as the end-user device can send one -- even one of  
7 those messages?

8 A. I think my testimony was that this Sony device wasn't  
9 actually operable within the IBM system. The answer is no.

10 Q. Did you identify a different end-user device for us  
11 today?

12 A. A physical device? I identified the end-user device in  
13 Figure 6. I identified also the end-user device that was  
14 disclosed by the DoCoMo announcement about a mobile phone  
15 with an audio player in it.

16 Q. Did that ever get built, the NTT DoCoMo mobile phone  
17 thing you're referring to?

18 A. I don't really know.

19 Q. How many days before Mr. Racz filed his patent  
20 application was that publication you referenced?

21 A. I believe it was early -- earlier in the month of  
22 October. I don't remember the exact date. It was about a  
23 month, approximately.

24 Q. Had they done it? Had they built a mobile phone that  
25 could do any of this, or were they talking about that they

1 might think about doing it in the future?

2 A. They announced it. They had not built it.

3 Q. They hadn't even designed it. You have no evidence that  
4 they designed it, do you?

5 A. No. No, sir.

6 Q. Are you aware of any of the prior art that's asserted  
7 here in this case that describes particular devices or  
8 methods for combining payment functionality, secure  
9 downloading, storage and rules for the use of content on one  
10 portable device you carry with you?

11 A. I observed the prior art through the lens of the  
12 asserted claims. To the extent that that -- what you just  
13 asked me is echoed specifically in a claim, then my answer  
14 would be yes. But outside the -- the lens of the claim,  
15 which is what I've analyzed, that generally describes what  
16 these patents are about.

17 Q. You used the claim to help you go back and pick through  
18 the prior art, sir?

19 A. No, it's the opposite. I have to find disclosure in the  
20 prior art of what the claim requires.

21 Q. Do you know if there are any other of these prior art  
22 fact witnesses that Apple is paying?

23 A. Other than who?

24 Q. The one I mentioned earlier? Do you remember his name?

25 A. Oh, no.

1 Q. Mr. Lotspiech, who was at IBM. That was the one I  
2 mentioned earlier, correct?

3 A. And I testified I don't remember that name, and I didn't  
4 know anything about any relationship between him and Apple.

5 Q. Mr. Wechselberger, will you turn to Tab 5 in the  
6 cross-examination binder?

7 A. I'm there.

8 Q. What's at Tab 5 in your cross-examination binder?

9 A. This is a letter, appears to be from Ropes & Gray, to a  
10 Mr. Jeffrey Lotspiech, dated December 14th, 2014.

11 MR. CALDWELL: I'm sorry. Does Apple counsel not  
12 have a copy of the binder?

13 Q. (By Mr. Caldwell) It's a retention agreement with Mr.  
14 Lotspiech, formerly of IBM, between him and Apple's law firm,  
15 correct?

16 A. I've never seen this document. I don't know what it is.

17 Q. Do you accept my representation that it's an agreement  
18 between Apple's law firm and Mr. Lotspiech, sir?

19 A. I'm not sure I know how to answer that; but given that  
20 I've never seen the document, I -- I suppose to go forward,  
21 if you represent that's what it is, I'll accept that. But  
22 with the understanding that I've not read it and I've never  
23 seen it.

24 Q. Okay. We can clarify it on redirect, if -- if  
25 necessary, but that -- I'll represent that to you, sir.

1 A. Okay.

2 Q. Did you know that Mr. Lotspiech was deposed in this  
3 case?

4 A. No.

5 Q. He gave sworn testimony about how what's in the Gruse  
6 patent and how the IBM EMMS and Project Madison system  
7 worked. Did you know that?

8 A. No.

9 Q. Would you have wanted to know that before you took the  
10 stand and asked the jury to invalidate Smartflash's patent  
11 claims based on Gruse or the IBM patents?

12 A. Without knowing what he had to say, I don't know.

13 Q. What's behind the next tab of your binder, sir? Who's  
14 that agreement with?

15 A. Tab 6?

16 Q. Yes, sir.

17 A. I have it.

18 Q. Who are the parties to that agreement, sir?

19 A. Similar letter from Ropes & Gray. This is dated  
20 September 15th of last year to a Mr. Larry Puhl.

21 Q. That's the same Puhl that you mentioned at least  
22 once -- twice on the chart, correct?

23 A. I have not seen this document before, so I don't know.

24 Q. Okay. Do you mind if I circle the references that are  
25 affected by these agreements, sir?

1 A. With the understanding that I've never seen them and  
2 don't know what they say, so I'm subject to your  
3 representation.

4 Q. Yes, sir. Mr. Wechselberger, what's behind the next tab  
5 of the binder?

6 A. Another letter.

7 Q. Between Ropes & Gray and whom?

8 A. It says Andrew A. Poggio.

9 Q. What's behind the next tab, sir?

10 A. I'm looking at Tab 8, and I find another letter to a  
11 person named Leo -- the last name is H-e-j-z-a.

12 Q. Do you know who that is?

13 A. No.

14 Q. He's one of the named inventors on one of those prior  
15 art patents you serten -- you asserted.

16 A. Okay. I don't recognize the name. I only paid  
17 attention to the first named inventors.

18 Q. I believe he's the second named inventor on Poggio.

19 Does that sound familiar or surprise you?

20 A. If you represent to me that's the case, I'll accept it.

21 Q. When I went and took Mr. Lotspiech's deposition about  
22 how the IBM EMMS system worked, he explained that his EMMS  
23 system wasn't even combined with the Memory Stick in the Sony  
24 device until 2001. Does that surprise you, sir?

25 A. No.

1 MR. CALDWELL: Mr. Mortensen, will you pull up Mr.  
2 Lotspiech, at Page 217, Line 20 through 218, Line 1?

3 Q. (By Mr. Caldwell) Do you see, starting at Line 20 from  
4 Mr. Lotspiech's sworn testimony:

5 All right. Now, did the IBM EMMS system allow for  
6 transferring content onto Flash memory onto a Memory Stick to  
7 be used on a portable media device?

8 Yes.

9 And when was that first implemented for EMMS?

10 Probably -- implemented was probably 2001 or 2002.

11 Do you see that, sir?

12 A. I do.

13 Q. Now, if he's telling the truth in his sworn testimony,  
14 that means it didn't even happen in the prior art period, did  
15 it?

16 A. I'm -- I'm not rep -- it did not, and I'm not  
17 representing, and never have, that it did.

18 Q. While I've got the red marker out, is there someone else  
19 on the chart that we know is a fact witness who was hired by  
20 Apple's lawyers or retained by Apple's lawyers?

21 A. That question is addressed to me?

22 Q. Yes, sir.

23 A. I -- I have no knowledge of any such activities or  
24 relationships.

25 Q. Well, you were here when Mr. Ansell testified the other

1 day, right?

2 A. I'm unaware of his -- other than what he shared in his  
3 testimony, I'm unaware of any other facts behind the scenes.

4 Q. But he acknowledged he's been retained as a fact witness  
5 and is being compensated as a fact witness by Apple's  
6 lawyers, correct?

7 A. I heard him indicate he was being paid. I did not hear  
8 him indicate he was retained.

9 Q. Are you aware of any of your anticipation or  
10 obviousness -- excuse me, are you aware of any of your  
11 anticipation or obviousness references that are unaffected by  
12 some fact witness that Apple's lawyers are paying?

13 A. I don't understand the question.

14 Q. Are Apple's lawyers paying a fact witness connected to  
15 every single one of your anticipation and obviousness  
16 combinations, sir?

17 A. I have no knowledge of that. I don't know.

18 Q. Do you think customers would even like using that purple  
19 gadget that you have there?

20 A. I don't have an opinion on that either. I -- I haven't  
21 ever used it or tried to make it work. I don't know how --  
22 actually how it functions.

23 Q. Sir, there's literally no way to buy content on that  
24 device, correct? Even in 2002, if we fast forward a few  
25 years?

1 A. I know what was disclosed about that in the references  
2 in the critical time period before the priority date. As far  
3 as the details of what's inside the function, I don't know.

4 Q. What was disclosed prior to Mr. Racz's patent was never  
5 that you could buy something from the Sony device, correct?

6 A. You said Mr. Ansell?

7 Q. I -- I may have, and I'll just rephrase it in case I  
8 have the Thursday afternoon blues. I'm sorry.

9 THE COURT: Wait a minute now. Counsel, we're not  
10 going to have sidebar comments about --

11 MR. CALDWELL: My apologies.

12 THE COURT: -- whether or not you have the  
13 Thursday afternoon blues.

14 MR. CALDWELL: My -- my apologies, Your Honor.

15 THE COURT: And, Mr. Wechselberger, if you don't  
16 know, say you don't know. Don't give us a 15-minute  
17 gobbledegook answer that doesn't say I don't -- I don't know.

18 If you know, answer it. If you don't, don't do  
19 what you've been doing. All right?

20 THE WITNESS: All right.

21 THE COURT: And, Mr. Albritton, you know not to  
22 parade into the middle of the courtroom when an examination  
23 is going on. Your own co-counsel, Ms. Fukuda had the good  
24 manners to sit behind the bar when she came in. Don't do  
25 that again.

1 MR. ALBRITTON: Yes, sir, I apologize.

2 THE COURT: All right. Let's proceed.

3 Q. (By Mr. Caldwell) Mr. Wechselberger, in order to do all  
4 these steps that are in the Gruse patent, the end-user device  
5 has to have some sort of communication means, correct?

6 A. Yes.

7 Q. That device has no communication means, correct?

8 A. I don't know.

9 Q. It has no WiFi, no cellular, no Ethernet network, no  
10 phone modem, right?

11 A. It's designed for a hard-wired connection to another  
12 device.

13 MR. CALDWELL: Objection, nonresponsive.

14 THE COURT: Sustained.

15 Q. (By Mr. Caldwell) It has -- okay. You look like you're  
16 about to answer.

17 A. I was going to ask for the question repeated. I -- I  
18 didn't mean to be non -- nonresponsive.

19 THE COURT: Gentlemen, we don't need a  
20 conversation. We need questions and answers. We don't need  
21 guesses about what you're going to do next. And we don't  
22 need unsolicited apologies. We just need questions and  
23 answers.

24 MR. CALDWELL: I was trying not to talk over him  
25 because I thought he was about to speak. My -- my fault.

1 I'm sorry.

2 Q. (By Mr. Caldwell) Mr. Wechselberger, there's no  
3 communication means for communicating with a clearinghouse,  
4 an electronic digital content store, or a content hosting  
5 system on that device, correct?

6 A. I don't know.

7 Q. Would you agree that that device is meant for a user to  
8 buy something on a totally separate computer and maybe carry  
9 a card over to the device?

10 A. I believe so, yes.

11 Q. Do you believe that the Gruse patent accurately  
12 describes watermarks in the EMMS system?

13 A. No.

14 THE COURT: Counsel, approach the bench.

15 (Bench conference.)

16 THE COURT: How much longer do you have on this  
17 cross?

18 MR. CALDWELL: Probably --

19 THE COURT: I'm not going to hold you to it. I  
20 just want to know.

21 MR. CALDWELL: I'm guessing 35 to 40 minutes or so.

22 THE COURT: And I'm sure you'll have redirect?

23 MR. BATCHELDER: I may, but I'll try to keep it  
24 short.

25 THE COURT: We're going to take a recess now.

1 Everybody get a breath of air.

2 (Bench conference concluded.)

3 THE COURT: All right. Ladies and Gentlemen, we're  
4 going to take this opportunity to have a short recess.

5 Members of the Jury: Please leave your notebooks  
6 in the chairs. Don't discuss anything about the case. We'll  
7 make this about 10 to 15 minutes, somewhere in that range.

8 And then we'll be back to continue with the  
9 cross-examination of the witness. You're excused for recess  
10 at this time.

11 COURT SECURITY OFFICER: All rise for the jury.

12 (Jury out.)

13 THE COURT: All right. Counsel, we stand in  
14 recess.

15 (Recess.)

16 (Jury out.)

17 COURT SECURITY OFFICER: All rise.

18 THE COURT: Be seated.

19 Are we ready to proceed, Counsel?

20 MR. CALDWELL: I am, Your Honor.

21 THE COURT: Let's bring in the jury, please.

22 COURT SECURITY OFFICER: All rise for the jury.

23 (Jury in.)

24 THE COURT: Please be seated.

25 All right. We'll continue with cross-examination

1 of the witness by the Plaintiff.

2 Proceed, Mr. Caldwell.

3 MR. CALDWELL: Thank you, Your Honor.

4 Q. (By Mr. Caldwell) Mr. Wechselberger, did you rely on Mr.  
5 Lotspiech in your report?

6 A. I don't remember.

7 MR. CALDWELL: Can we see Page 99 of  
8 Mr. Wechselberger's invalidity report?

9 If we can look at the top paragraph there.

10 Q. (By Mr. Caldwell) Did you write in your report: I  
11 further understand that Mr. Lotspiech explained that some  
12 aspects of the technology of Downs and Gruse were used in  
13 Project Madison?

14 A. I see that.

15 Q. Did you write that, sir?

16 A. This is from my report, yes, I did.

17 MR. CALDWELL: Mr. Mortensen, do you have  
18 Mr. Wechselberger's slides? Would you mind putting up Slide  
19 42, please.

20 Q. (By Mr. Caldwell) Mr. Wechselberger, I'm putting this  
21 one up as an exhibit of one of your slides. Do you recognize  
22 this generally?

23 A. Yes.

24 Q. Up in the upper left-hand, you have a comment of  
25 Gruse/IBM versus Smartflash.

1 Do you see that?

2 A. Yes.

3 Q. To your knowledge, IBM and any of the other companies,  
4 none of them are contending that Smartflash's patents are  
5 invalid, correct?

6 A. I don't understand the question.

7 Q. There were a handful of your slides that presented a  
8 company versus Smartflash.

9 Do you see that?

10 A. I see the title in the upper left corner of the slide.

11 Q. I merely wish to clarify, IBM, Motorola, Sun, Xerox,  
12 they're not contending Smartflash's patents are invalid, are  
13 they?

14 A. The companies themselves are not. This is simply my way  
15 of referencing the reference.

16 Q. The prior art that you cited, other than a few press  
17 articles about IBM, was all of the other prior art you cited  
18 basically either a U.S. patent or a European patent?

19 A. You said IBM. I presume -- I will answer that assuming  
20 you meant to say IBM system.

21 Q. Well, I meant --

22 A. I don't -- I don't understand the question.

23 Q. I meant, if we set aside the press articles that you  
24 showed us, the rest of the references that you cited are  
25 patents, correct?

1 A. Yes, sir.

2 Q. Is it your position that the Patent Examiners at the  
3 Patent Office did not have access to those references or the  
4 ability to find them in searches?

5 A. They wouldn't -- I don't understand the question.

6 Q. Mr. Wechselberger, in your direct, didn't you mention a  
7 couple of times that the references you were looking at were  
8 not considered by the Examiner during prosecution?

9 A. Yes.

10 Q. The truth is you don't know that, correct?

11 A. I know what is recited on the title pages of the  
12 patents, and that's what I relied upon.

13 Q. But the truth is you don't know whether or not the  
14 Examiner considered them, correct?

15 A. Yes, I suppose that's correct.

16 Q. Do you understand that Examiners are only charged with  
17 citing what they perceive to be the best references?

18 A. I'm unfamiliar with the instruction by which the USPTO  
19 operates.

20 Q. Sir, in order to invalidate Smartflash's claims, am I  
21 correct that you have to prove invalidity by a higher burden  
22 than the burden of proof on Smartflash when proving  
23 infringement?

24 A. I don't know.

25 Q. Sir, invalidity has to be proven by clear and convincing

1 evidence.

2 Does that sound familiar?

3 A. Yes, I understand that.

4 Q. Mr. Wechselberger, is there something fundamentally  
5 different about the Stefik and Ginter references than some of  
6 the others?

7 A. I don't -- I don't understand the question. It was  
8 rather broad.

9 Q. The Stefik and Ginter references are metered billing  
10 references, correct?

11 A. They can perform that function. I wouldn't describe  
12 them that way.

13 Q. When we look at Figure 1 of the Stefik patent, does it  
14 show how you would send payment data and get back payment  
15 validation data before you get content?

16 A. Figure 1 does not, no.

17 Q. In fact, Figure 1 shows that you transmit the digital  
18 work out to the recipient before you deal with billing,  
19 correct?

20 A. I would agree with respect to Figure 1.

21 Q. That is metered billing, correct?

22 A. No.

23 Q. Does Ginter -- the preferred embodiment of Ginter work  
24 in a very similar manner?

25 A. Similar to what?

1 Q. Stefik.

2 A. I would answer that by saying they both have teachings  
3 that overlap, but I would not consider them architecturally  
4 or structurally the same.

5 Q. Well, when describing one of them -- and perhaps you can  
6 help me remember which one -- when describing one of them  
7 today, you pointed to a sentence, just one sentence, and  
8 said: Or you can debit with a debit card or something like  
9 that.

10 Do you recall that?

11 A. Yes, sir.

12 Q. Do you remember which reference that was?

13 A. Yes. That was Stefik/Xerox.

14 Q. Sir, in the Stefik/Xerox reference, is there any other  
15 description of how debit operates besides the sentence you  
16 showed?

17 A. I don't recall. That was clear and short and crisp, so  
18 I rather liked that one.

19 Q. Mr. Wechselberger, I believe you also said in your  
20 direct that the way the debit card works is, it's like you  
21 pay for your gas before you get it.

22 Do you remember that?

23 A. Yes, sir.

24 Q. How do you pay for your gas before you get it?

25 A. A debit transaction is a realtime process. The money is

1 immediately extracted from your bank account.

2 Q. Well, how much money is extracted before I pump gas into  
3 the tank of my truck?

4 A. It happens as part of the transaction. Whatever gas you  
5 are done with, it's paid on the spot.

6 Q. After, correct?

7 A. I would call it a realtime transaction.

8 Q. But not before, correct?

9 A. The bank can't know how much gas you're putting in.

10 Q. At the beginning of your testimony, you spent a few  
11 minutes talking about non-infringement, correct?

12 A. Yes.

13 Q. Were you suggesting that the Apple system does not meet  
14 the payment elements of the claims?

15 A. Absolutely.

16 Q. What is the Court's construction for payment data?

17 A. Data that can be used to make payment.

18 Q. Is a DSID, a GUID, and an MID used when you buy content  
19 from the iTunes Store?

20 A. Yes, sir.

21 Q. In your view, is credit card information payment data?

22 A. In the context of how credit card information is used in  
23 the accused system or generally speaking? I don't understand  
24 the question.

25 Q. Does credit card information meet the construction of

1 payment data?

2 A. If it is used to make payment for content, it is.

3 Q. And when buying an asset through the iTunes Store or the  
4 App Store, the user's computer sends a DSID, GUID, and MID to  
5 Apple's system, correct?

6 A. Yes.

7 Q. Those are used in order to purchase the content,  
8 correct?

9 A. I would disagree with that.

10 Q. Are they validated when they're received?

11 A. They are validated by the Apple server at the -- upon  
12 reception, yes.

13 Q. Mr. Wechselberger, did you look at any code in preparing  
14 your report?

15 A. No.

16 Q. Mr. Wechselberger, were you asked to form an opinion  
17 about the payment terms?

18 A. Yes.

19 Q. Mr. Wechselberger, without reviewing the code, did you  
20 reach a conclusion about the payment elements?

21 A. I don't understand the question.

22 Q. Mr. Wechselberger, did you reach a conclusion about  
23 whether the payment elements of the claim are met in Apple's  
24 system?

25 A. Yes, I did.

1 Q. Mr. Wechselberger, you would agree that your report --  
2 your non-infringement report was written mostly by the  
3 lawyers, correct?

4 A. No, I don't agree with that. Well, I agreed earlier to  
5 80 -- 70 or 80 percent, whatever I testified to. So if  
6 that's what you mean by most, then, yes, I agree.

7 Q. Mr. Wechselberger, did you also opine on the payment  
8 validation data terms?

9 A. Yes.

10 Q. What is Fiddler?

11 A. I don't understand the question.

12 Q. In the context of computers and networks, what is  
13 Fiddler?

14 A. I don't know.

15 Q. What is Wireshark?

16 A. I think -- well, I -- now that I think I understand your  
17 question, they're analysis tools.

18 Q. Would you agree that what payment validation data is, is  
19 information that's returned from a payment validation system  
20 based upon an attempt to validate payment data?

21 A. Yes, sir.

22 Q. And the Apple system validates the DSID, the GUID, and  
23 the MID that Dr. Jones pointed to, correct?

24 A. Yes.

25 Q. Do you understand that Dr. Jones also, as part of his

1 payment validation data, provided Fiddler and Wireshark  
2 reports showing information that Apple sends back when it's  
3 validated the payment data?

4 A. I understand that he testified that he used those tools  
5 to analyze what was going on, that he concluded that it was  
6 payment validation data.

7 Q. You got copies of his reports and exhibits and all that,  
8 correct?

9 A. Yes, sir.

10 Q. You've never seen his Fiddler --

11 A. No.

12 Q. -- Wireshark results?

13 A. No, sir.

14 Q. You got them, though, didn't you?

15 A. If they were part of his report, yes.

16 MR. CALDWELL: I'll pass the witness, Your Honor.

17 THE COURT: Redirect?

18 MR. BATCHELDER: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. BATCHELDER:

21 Q. Mr. Wechselberger, when you said -- you were just asked  
22 what percentage of your report you wrote.

23 You recall those questions?

24 A. Yes.

25 Q. Were you talking about how much you typed?

1 A. Yes.

2 Q. And, again, you didn't type more because why?

3 A. It was not very efficient for me to attempt to do all  
4 the typing. I'm not very fast and not as accurate as  
5 alternatives.

6 Q. The opinions set forth in your report, sir, are they  
7 yours or somebody else's?

8 A. My opinions are mine.

9 Q. Do you own those reports?

10 A. I own those reports.

11 Q. You stand behind them?

12 A. Yes, sir.

13 Q. Let me just come back quickly to --

14 MR. BATCHELDER: If we could look at  
15 Mr. Wechselberger's Slide 5.

16 Q. (By Mr. Batchelder) Coming back to Mr. Caldwell's  
17 question about whether you looked at code.

18 MR. BATCHELDER: Can we go to the next slide,  
19 please?

20 Q. (By Mr. Batchelder) On the right, the DSID, GUID, MID,  
21 is there any dispute about whether that information packet  
22 gets sent?

23 A. There's no dispute between the parties.

24 Q. You and Dr. Jones agree on the facts, right?

25 A. Yes, sir, we do.

1 MR. BATCHELDER: Can we pull up Slide 9, please?

2 Can we click -- click again?

3 Q. (By Mr. Batchelder) Is there any dispute between you  
4 and Dr. Jones about whether a buy request gets sent or a  
5 download response gets sent down?

6 A. No dispute whatsoever.

7 Q. Was there any need for you to look at code, given that  
8 you agree on the facts?

9 A. Not at all.

10 Q. In analyzing whether the four patent claims here are  
11 valid, I'm just going to read some reference names:

12 Gruse/IBM, Ansell/Liquid Audio, Poggio/Sun Microsystems,  
13 Puhl/Motorola. Do you have those in mind?

14 A. Okay. Yes.

15 Q. What disclosure are you relying on to show invalidity,  
16 the patent document or something else?

17 A. The patent.

18 Q. Do you need to talk to anybody else when you're looking  
19 at the patent?

20 A. No. The patent is the embodiment of the prior art. It  
21 is what discloses, for purposes of invalidity analysis, and  
22 any other such communication doesn't matter.

23 Q. And when the prior art teaches a given system, does  
24 someone need to build it first before it counts as prior art?

25 A. No, sir, they do not.

1 Q. Now, Mr. Caldwell asked you about Paragraph 151 of your  
2 expert report. Do you recall that?

3 A. Yes.

4 MR. BATCHELDER: And could you please put up, Mr.  
5 Lee, in Mr. Wechselberger's opening report, I want to see  
6 Exhibit D and Page 10?

7 Q. (By Mr. Batchelder) While that's being pulled up, sir,  
8 he was asking you about the payment validation system,  
9 correct?

10 A. Yes.

11 Q. And in Paragraph 151, he asked why didn't you say that  
12 the clearinghouse was that payment validation system? Do you  
13 remember those questions?

14 A. Yes.

15 Q. All right. Now, turning to Page 10 of the Exhibit D to  
16 your expert report -- first of all, would you tell the jury  
17 what Exhibit D is?

18 A. This is called an invalidity chart. And as part of my  
19 work on the project, this is a way of rigorously examining  
20 whether the prior art disclosures revealed what is claimed.

21 And so the claim elements are down the left, and the  
22 evidence that supports that it is disclosed in the art is in  
23 the paragraphs on the right-hand side of the chart.

24 Q. All right. Now, if you look in your table on the line  
25 that correlates with that payment validation system that Mr.

1 Caldwell asked you about, if you look in the third paragraph  
2 and the third line down -- third line down, it says --  
3 begins: The clearinghouses 105 -- and then you put paren --  
4 payment validation system, right?

5 A. Yes, sir.

6 Q. And that's exactly what you testified on direct?

7 A. Just today, I did.

8 Q. And Mr. Caldwell didn't show you that when he was  
9 cross-examining you about this?

10 A. He did not.

11 MR. BATCHELDER: Pass the witness, Your Honor.

12 THE COURT: Further cross-examination.

13 MR. CALDWELL: Thank you, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. CALDWELL:

16 Q. Mr. Wechselberger, if you didn't need to talk to those  
17 prior art witnesses or if no one would need to talk to them,  
18 do you know why it was Apple retained them and bound them  
19 contractually not to talk to Smartflash?

20 A. No, sir.

21 Q. Did you figure out if you had an anticipation theory on  
22 the '221 patent -- and if you told me already, maybe I just  
23 failed to write it down. But do you have one?

24 A. I can't see what you're pointing at. You're in front of  
25 the chart.

1 Q. Yes, sir. I just wish to know if you have an  
2 anticipation theory on the '221?

3 A. Yes, I indicated it was Gruse/IBM -- '221, yes. Yes,  
4 that's what I said.

5 Q. Mr. Wechselberger, Gruse does not describe purchasing or  
6 downloading from a portable device, does it?

7 A. I'm confused about the question because I thought you  
8 were talking about Claim 32. Was it a different question?

9 Q. Yes. I'm just asking, Gruse does not describe  
10 purchasing and downloading to a portable device, correct?

11 A. I would agree with that.

12 MR. CALDWELL: Pass the witness.

13 THE COURT: Further direct?

14 MR. BATCHELDER: No further questions, Your Honor.

15 THE COURT: All right. You may step down,

16 Mr. Wechselberger.

17 MR. BATCHELDER: Your Honor, we request that  
18 Mr. Wechselberger be released?

19 THE COURT: Is there objection?

20 MR. CALDWELL: There is none, Your Honor.

21 THE COURT: All right. Mr. Wechselberger, you are  
22 not only able to step down, but you're excused. You may stay  
23 or you may leave. It is up to you.

24 All right. Defendant, call -- call your next  
25 witness.

1 MR. ALBRITTON: Thank you, Your Honor. We call  
2 Dr. -- Dr. Ravi Dhar.

3 THE COURT: All right. The witness will be sworn.  
4 (Witness sworn.)

5 THE COURT: Please have a seat, sir.

6 THE WITNESS: Thank you, sir, Your Honor.

7 MR. ALBRITTON: Go ahead and pass everything out,  
8 please.

9 THE COURT: All right. Mr. Albritton, you may  
10 proceed.

11 MR. ALBRITTON: May it please the Court. Eric  
12 Albritton on behalf of Apple.

13 DR. RAVI DHAR, DEFENDANT'S WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MR. ALBRITTON:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. If you would, please, sir, introduce yourself to the  
19 jury?

20 A. Sure. My name is Ravi Dhar.

21 Q. Now, Dr. Dhar, I'm going to ask you some questions, and  
22 I'm going to ask you to please speak slowly and speak clearly  
23 in the microphone. Can you try to do that for us?

24 A. Sure.

25 Q. Where do you live, Dr. Dhar?

1 A. I live in New Haven, Connecticut.

2 Q. Dr. Dhar, have you prepared any demonstratives to assist  
3 us in this case today?

4 A. I have.

5 MR. ALBRITTON: Mr. Lee, if you would, please bring  
6 up Defendant's Exhibit No. 347?

7 Q. (By Mr. Albritton) Dr. Dhar, what is Defendant's Exhibit  
8 No. 347?

9 A. This is the first page of my resume.

10 MR. ALBRITTON: Mr. Lee, if you would, pull out the  
11 education section.

12 Q. (By Mr. Albritton) Dr. Dhar, if you would, tell the  
13 Ladies and Gentlemen of the Jury about your educational  
14 background?

15 A. Sure. My undergraduate degree was from India in  
16 engineering, Indian Institute of Technology. Subsequently, I  
17 went and did a Master's degree in business, also in India.

18 In 1987, I graduated. And then I came to the U.S. in  
19 1988 to get a Ph.D. I graduated -- I finished my Ph.D., in  
20 1992 from University of California at Berkeley.

21 Q. And what is your Ph.D. from the University of California  
22 at Berkeley in?

23 A. So it's broadly in the area of business administration,  
24 and my focus is on marketing.

25 Q. Thank you.

1 MR. ALBRITTON: If you would back that out, Mr.  
2 Lee.

3 Q. (By Mr. Albritton) Now let's talk about your education.  
4 After you left Berkeley, California, what job did you  
5 first take?

6 A. I took a research and teaching job at Yale University at  
7 the School of Management.

8 Q. And do you still work at Yale University?

9 A. I do.

10 Q. If you would, tell the Ladies and Gentlemen of the Jury  
11 about the positions you currently hold at Yale?

12 A. Sure. I have -- I have what's called a chaired  
13 professorship, George Rogers Clark professor of management.

14 In addition, I have a secondary appointment at the  
15 School of Psychology or Department of Psychology as a  
16 professor.

17 Q. Okay. And let's just slow down just a hair.

18 We also see here, Dr. Dhar, that since 2004, you've been  
19 the director of the Yale Center for Consumer Insights. If  
20 you would, tell the Ladies and Gentlemen of the Jury what is  
21 the Yale Center For Consumer Insights.

22 A. So most universities have research centers, and this is  
23 one of them. And the idea behind that was around 10 years  
24 ago --

25 THE COURT: Dr. Dhar, please slow down.

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Okay. Let's continue.

3 A. And so around 10 years ago, we decided that academic  
4 research is known for being rigorous but not necessarily  
5 relevant, so the idea was how best to do relevant research  
6 but to work collaboratively with companies. And that's what  
7 the research center does, works on the questions around  
8 frontiers of consumer behavior.

9 Q. (By Mr. Albritton) Now, Dr. Dhar, as a professor of  
10 management, do you teach courses at Yale?

11 A. I do.

12 Q. And have you been teaching courses over the last 20  
13 years?

14 A. Yes, I have.

15 Q. To what sorts of students do you teach courses?

16 A. So typically I teach to graduate students, the MBA  
17 program at Yale, and then I also teach Ph.D. courses in which  
18 we have both undergraduates and Ph.D. students.

19 Q. Now, Dr. Dhar, have you taught courses that relate to,  
20 among other things, survey design?

21 A. I have, in the Ph.D. courses.

22 Q. Do you have a particular expertise within the field of  
23 marketing, Dr. Dhar?

24 A. So I've done research in a lot of different areas in --  
25 under marketing. My basic research is what's called consumer

1 decision-making, consumer behavior, how do people make  
2 choices, how do people arrive at judgments. I have also  
3 studied questions around branding and marketing strategy.

4 Q. Dr. Dhar, let's go back to Defendant's Exhibit No. 347.  
5 And let's talk a bit about your academic honors and your  
6 fellowships.

7 If you would, please, sir, tell us about one of the more  
8 recent awards you've received.

9 A. Sure. One of the most recent awards I received in 2012  
10 was a Distinguished Scientific Contribution Award. It's like  
11 a lifetime achievement award for consumer psychology.

12 Q. Now, Dr. Dhar, I see a number of entries that relate to  
13 an award called the O'Dell Award. If you would, please tell  
14 the Ladies and Gentlemen of the Jury what the -- what the  
15 O'Dell Award is?

16 A. So O'Dell Award is given for publication in one of the  
17 journals, Journal of Marketing Research, and it's given for  
18 what's called, I think, long-term contribution. So it's  
19 given once every five years.

20 MR. ALBRITTON: All right. Mr. -- if you would  
21 back out of that, Mr. Lee. And if you would, please, sir, go  
22 to the next page of that same exhibit.

23 Q. (By Mr. Albritton) We heard yesterday or two days ago,  
24 I guess, about editorial boards. Do you serve on the board  
25 of any editorial -- do you serve on any editorial boards?

1 A. I do.

2 Q. If you would, at a high level, tell the members of the  
3 jury about your service on those boards and what you're  
4 involved with.

5 A. Sure. So I serve as what's called an associate editor  
6 or -- or an editorial board member of various marketing  
7 journals. Again, the names will be all -- you know, Journal  
8 of Consumer Research, Journal of Consumer Psychology, Journal  
9 of Marketing Research, and so forth.

10 Q. Okay.

11 MR. ALBRITTON: If you would back out there, Mr.  
12 Lee.

13 Q. (By Mr. Albritton) Next on your resume or CV, Dr. Dhar,  
14 there's a list of publications. Are those publications and  
15 papers you've written in peer-reviewed journals?

16 A. That -- that's the list, yes.

17 Q. How many have you authored?

18 A. Around -- between 50 and 60 -- 55 or so.

19 Q. Okay. Now, Dr. Dhar, I see a notation here on Page 2  
20 that says approximate number of citations in Google Scholar.  
21 If you would, tell the Ladies and Gentlemen of the Jury  
22 what that refers to.

23 A. So Google Scholar is a service provided by Google which  
24 every time any -- I guess not any academic, but any work is  
25 cited, they count that. So this is the number of citations

1 to the papers I've written.

2 Q. So more than 6,000 times your papers have been cited; is  
3 that what that means?

4 A. Correct.

5 Q. Dr. Dhar, as part of your academic work and your  
6 academic research and your academic publishing, have you done  
7 consumer surveys?

8 A. I have.

9 Q. In these 50 to 60 articles that you've written, did the  
10 majority of them involve surveys and experimental research?

11 A. Yes. Most of them involve -- I'm an empirical person  
12 which means I collect data, and the majority of them had some  
13 surveys or experiments in them.

14 Q. Okay. Dr. Dhar, there was a recent article about author  
15 productivity in the premiere AMA journals. My first question  
16 is, what is an AMA journal?

17 A. AMA is American Marketing Association.

18 Q. Okay. And what did that recent survey indicate about  
19 the persons who have published the most articles in those  
20 premiere journals over the last four-year period?

21 A. I was tied for first in that.

22 Q. Dr. Dhar, have you given --

23 MR. ALBRITTON: If you would, Mr. Lee, let's go to  
24 Page 8, please, sir.

25 Q. (By Mr. Albritton) Have you given -- been invited and

1 given presentations at universities around the United States  
2 of America?

3 A. Yes, I have.

4 Q. And what -- broadly, what do these presentations relate  
5 to? What subject matter?

6 A. It's broadly based -- you present your research, and in  
7 my case it was the work I do on consumer behavior, consumer  
8 decision-making.

9 Q. Have you given presentations at universities here in the  
10 State of Texas?

11 A. Yes, I have.

12 Q. If you would, give us a few examples.

13 A. So the few listed here are UT Austin, University of  
14 Texas Austin, Texas A&M, and University of Houston, as well.

15 Q. Dr. Dhar, approximately how many surveys have you worked  
16 on over your career?

17 A. It's well over 250.

18 Q. And in what various capacities did you work on those  
19 surveys?

20 A. So a lot of work -- as I mentioned earlier, my research  
21 is using real experiments and surveys. I've also done it for  
22 consulting and for litigation.

23 Q. When you say litigation, you mean for purposes of  
24 assisting in a lawsuit?

25 A. That's correct.

1 Q. Dr. Dhar, of those 250 or so surveys, did either you or  
2 someone working directly for you draft each and every one of  
3 those questions in those surveys?

4 A. For the surveys I do, yes, that's correct.

5 Q. Also, the descriptions that precede the surveys, in each  
6 of those instances, Dr. Dhar, did either you personally or  
7 somebody working under your direction draft those scenarios  
8 to be used in those surveys?

9 A. For the surveys I conducted, that's correct.

10 Q. Dr. Dhar, have you ever conducted a survey where  
11 somebody just merely gave you a description to use in a  
12 survey question?

13 A. I have not.

14 Q. Why not, Dr. Dhar?

15 A. Well, I mean, for my own research, the way you phrase  
16 the questions, the wording of a question, that can have a big  
17 influence. So I know that it's important to -- to phrase  
18 appropriately the questions that you have.

19 Q. So, Dr. Dhar, in addition to doing surveys for academic  
20 purposes, you mentioned you've done some in a consulting  
21 capacity; is that right?

22 A. Yes.

23 Q. If you would, explain to the members of the jury some of  
24 the companies you've done surveys for in a consulting  
25 capacity?

1 A. Sure. They will be technology companies like IBM or  
2 Hewlett-Packard. I've worked with consumer goods companies  
3 like Procter & Gamble, PepsiCo, Visa, as financial services,  
4 so there's a range of different companies.

5 Q. And those have nothing to do with lawsuits. That's just  
6 business consulting; is that right?

7 A. Correct.

8 Q. If you would, give the members of the jury an example or  
9 two, briefly, of the types of surveys you've done for these  
10 companies.

11 A. So there are a range of marketing questions.  
12 Hewlett-Packard was interested in learning about customer  
13 satisfaction and customer retention for their products.

14 The survey I did for IBM was interesting. It was  
15 looking at business to business, how do businesses buy very  
16 high-tech products and services that IBM sells.

17 The surveys that I did with Procter & Gamble and PepsiCo  
18 would be much more consumer products; how do people buy soft  
19 drinks; are they willing to pay more when they go to a  
20 smaller mom-and-pop chain versus when they go to a, you know,  
21 Walmart or a Target and those kinds of things.

22 Q. Dr. Dhar, have you ever done surveys to be used to  
23 assist in a lawsuit such as this?

24 A. Yes, I have.

25 Q. Of all the surveys that you've done, what would you

1 approximate were the percentage you did for purposes of  
2 assisting in a lawsuit?

3 A. I would say around less than 10 percent.

4 Q. Of those surveys that you've done in this capacity, have  
5 you done them on behalf of companies such as Smartflash, the  
6 Plaintiff, and on behalf of companies such as Apple, the  
7 Defendant?

8 A. Yes.

9 Q. Have you ever testified in court before, Dr. Dhar?

10 A. I have.

11 Q. About how many times?

12 A. About four or five times.

13 Q. What do you spend the majority of your professional time  
14 doing, Dr. Dhar?

15 A. So I'm an academic, so the majority of my time is on  
16 academic research and teaching and also consulting, that we  
17 discussed.

18 Q. Okay. So about what percentage of the time do you spend  
19 assisting with lawsuit matters such as this?

20 A. I would say approximately one-third.

21 Q. Are you an expert, Dr. Dhar, in survey design?

22 A. Yes.

23 Q. Are you an expert in performing and analyzing consumer  
24 surveys?

25 A. Yes.

1 Q. Are you an expert in consumer behavior?

2 A. Yes.

3 Q. Have you written and taught on the subject of consumer  
4 behavior?

5 A. Yes.

6 Q. Is consumer behavior important to understand and to be  
7 able to offer expert opinions concerning consumer surveys?

8 A. In my opinion, yes.

9 Q. Dr. Dhar, are you being compensated for your time in  
10 this case?

11 A. Yes.

12 Q. And what is your standard hourly rate?

13 A. \$750 per hour.

14 Q. Dr. Dhar, is your compensation contingent on your  
15 conclusions in this case or its outcome?

16 A. It is not.

17 MR. ALBRITTON: Your Honor, we offer Dr. Ravi Dhar  
18 in the expert of field of consumer surveys and consume  
19 consumer behavior.

20 THE COURT: Is there objection?

21 MR. WARD: No objection.

22 THE COURT: The Court will recognize the witness as  
23 an expert in those fields.

24 Continue, Counsel.

25 MR. ALBRITTON: Thank you very much, Your Honor.

1 Q. (By Mr. Albritton) Dr. Dahr, what were you asked to do  
2 in this case?

3 A. So at a broad level, I was asked to look at  
4 Dr. Wechselberger's surveys and conclusions that he reached  
5 and how Mr. Mills used some of those results and whether  
6 there was a scientifically -- whether his results were  
7 scientifically well done; are there any scientific concerns  
8 with what he did.

9 Q. Dr. Dhar, what information did you consider in  
10 undertaking this study?

11 A. So, naturally, I looked at Dr. Wechselberger's surveys  
12 and reports and his deposition testimony. I also reviewed --  
13 not as comprehensively, but how Mr. Mills' report and  
14 testimony, how he was using it.

15 I conducted my own surveys, and I looked at basically my  
16 background and education and research in this area.

17 Q. Thank you, Dr. Dhar.

18 Were you in the courtroom when Mr. Racz and Dr.  
19 Wechselberger and Mr. Mills testified?

20 A. I was.

21 Q. Have you also -- were you here for a portion, for  
22 instance, today of Dr. Wechselberger -- or  
23 Mr. Wechselberger's testimony?

24 A. I was there briefly in the morning, and then I heard  
25 some of it towards the end.

1 Q. When you were here when Dr. Wecker testified, did you  
2 hear him criticize what you did in this case in any way?

3 A. Not specifically. I don't recall.

4 Q. Dr. Dhar, are you here to offer opinions about what are  
5 the appropriate damages, if, in fact, damages are owed?

6 A. I'm not a damages expert.

7 Q. Are you here to offer opinions on infringement or  
8 validity?

9 A. I'm not.

10 Q. What are you here to do, Dr. Dhar?

11 A. I'm here just to look at the measures that Dr. Wecker  
12 used in his surveys and -- and provide some of the scientific  
13 concerns that I found with it.

14 Q. On a high level, Dr. Dhar, what is your opinion about  
15 Dr. Wecker's surveys?

16 A. So Dr. Wecker had three measures that look at what he  
17 called -- and I might be paraphrasing -- what he called the  
18 value of the feature to Apple. And I'm going to look at  
19 those three measures, and my overall opinion is that all  
20 those three measures are highly unreliable.

21 MR. ALBRITTON: Mr. Lee, if you would, bring up  
22 Slide No. 2, please, sir.

23 Q. (By Mr. Albritton) What are the three categories of  
24 questions that were asked by Dr. Wecker that you analyzed and  
25 are here to offer opinions about?

1 A. So the three measures that he spoke about that talk  
2 about the value of the feature to Apple, one of them was  
3 alone motivate, the second was percent value of the feature,  
4 and the third was the purchase intention of certain  
5 descriptions of scenarios.

6 Q. Now, in each of these three categories, did he ask  
7 multiple -- did he ask these as it relates to different  
8 features -- I'm sorry -- as to different products, for  
9 instance?

10 A. Yes. They were asked for different devices, the three  
11 devices that are, you know, allegedly infringing here, the  
12 tablets, the smartphones, and the iPod Touch, and he also  
13 asked them for -- for movies and app scenarios.

14 Q. Now, for the purposes of simplicity, are we going to  
15 focus on just some of those questions?

16 A. That's correct.

17 Q. But are -- do your opinions apply and your criticisms  
18 apply across the board?

19 A. Yes. My report has all of them.

20 MR. ALBRITTON: Mr. Lee, if you would, please bring  
21 up Plaintiffs' Exhibit No. 205.002 at Page 19, and in  
22 particular, Question 4A.

23 Q. (By Mr. Albritton) Dr. Dhar, what is Question 4A on the  
24 screen?

25 A. So this is the first measure that he has, what I call

1 the alone motivate question. It says: For each device  
2 listed below, consider the capability to purchase apps from  
3 Apple's App Store. Did this capability alone motivate you to  
4 buy the device?

5 Q. Now, is that Dr. Wecker's survey question?

6 A. Correct.

7 MR. ALBRITTON: Now, Mr. Lee, if you would go to --

8 Q. (By Mr. Albritton) And is that what you refer to as the  
9 alone motivate question?

10 A. Yes.

11 MR. ALBRITTON: Now, if you would, Mr. Lee, go to  
12 Question 4B.

13 Q. (By Mr. Albritton) Dr. Dhar, what is Question 4B?

14 A. So this is what I referred to as the second measure he  
15 had for the value of the feature to Apple, which is the  
16 percent value question.

17 Q. Okay. And that's Dr. Wecker's actual question?

18 A. Correct.

19 MR. ALBRITTON: Now, Mr. Lee, if you would, please  
20 bring up Plaintiffs' Exhibit 205.001 at Page 54, specifically  
21 Question 6.

22 Q. (By Mr. Albritton) Dr. Dhar, what is that?

23 A. So this is Dr. Wecker's -- what I call the purchase  
24 intent question. That's the third measure that he has to  
25 determine the value of the feature to Apple.

1 Q. Okay. So these -- we've now seen the three questions --  
2 or examples of the three questions that you analyzed and are  
3 going to offer opinions about?

4 A. Yes. And I'm focusing on them. His survey had many  
5 other questions, but these are the ones that I understand  
6 that Mr. Mills is using for damages.

7 Q. Okay.

8 MR. ALBRITTON: If you would, Mr. Lee, please bring  
9 up Slide No. 3.

10 Q. (By Mr. Albritton) Dr. Dhar, if you would, on a high  
11 level, please summarize for the members of the jury why you  
12 believe Dr. Dhar's (sic) survey questions -- or his surveys  
13 are flawed and unreliable?

14 A. I think you meant Dr. Wecker's.

15 Q. Yes. I'm sorry. You're Dr. Dhar. I apologize. Yes, I  
16 meant Dr. Wecker.

17 A. Sure.

18 So the first concern I had for the alone motivate  
19 question -- so Dr. Wecker and Mr. Mills assumed that the  
20 alone motivate question measures are -- the understanding  
21 that the people have of the question is that when they answer  
22 yes to the question, it means this is the only feature -- why  
23 they bought the device. And I don't think that's correct.

24 The second question was the percent value question,  
25 which is -- Dr. Wecker assumes that the percent value

1 question, when somebody tells you what portion of the value  
2 is from this feature, the rest -- all the other features that  
3 a smartphone has or a tablet has, there is 100 percent minus  
4 the number to give for this feature, and I don't think that  
5 is reliable either.

6 And, finally, the scenarios that were provided to  
7 measure purchase intent were also flawed.

8 Q. Dr. Dhar, do you believe, in your expert opinion, that  
9 Dr. Wecker's surveys should be relied upon in making  
10 important decisions?

11 A. Not in my opinion.

12 MR. ALBRITTON: Mr. Lee, if you would, please bring  
13 up Plaintiffs' Exhibit 205.002, Page 19, Question 4A.

14 Q. (By Mr. Albritton) Dr. Dhar, we just looked at this. If  
15 you would, please read again Dr. Wecker's question to the  
16 jury.

17 A. The question reads: For each device listed below,  
18 consider the capability to purchase apps from Apple's App  
19 Store. Did this capability alone motivate you to buy the  
20 device?

21 Q. Dr. Wecker -- Dr. Dhar, what does "alone motivate" in  
22 that question refer to?

23 A. It refers to the capability to purchase apps.

24 Q. Is it your understanding that the Smartflash patents do  
25 not cover the mere capability to purchase apps?

1 A. I'm not a technical expert; but based on what I'm  
2 hearing, it's narrower than that. It's a matter of payment  
3 and downloading. But I'm not a technical expert.

4 Q. Dr. Dhar, does that question, Question 4A, ask about the  
5 manner in which to pay for apps that are purchased?

6 A. It does not. It asks about the capability to purchase  
7 apps.

8 Q. Dr. Dhar, is that question in any way targeted to a  
9 purchase decision in the year 2009?

10 A. It is not.

11 MR. ALBRITTON: If you would, Mr. Lee, bring up  
12 Slide 4 for us, please sir.

13 Q. (By Mr. Albritton) Dr. Dhar, according to Dr. Wecker and  
14 Mr. Mills, what is this question, Question 4A that we just  
15 looked at, attempting to measure?

16 A. So according to Dr. Wecker and Mr. Mills, if somebody  
17 answers yes to this question, what it's measuring is that  
18 means this was the only reason that caused them to make a  
19 purchase.

20 Q. Does it actually do that, Dr. Dhar?

21 A. Not in my opinion.

22 Q. Thank you very much.

23 MR. ALBRITTON: You can take that down.

24 Q. (By Mr. Albritton) Has Dr. Wecker offered any empirical  
25 evidence to show how respondents actually understood the

1 alone motivate question, that question being 4A?

2 A. He has not.

3 Q. Is there, in fact, any data that shows that the tested  
4 feature was not the only reason to buy the -- the product at  
5 issue in the question?

6 A. I conducted a survey in this matter.

7 Q. Let's talk about your survey?

8 MR. ALBRITTON: If you would, Mr. Lee, please bring  
9 up Defendant's Exhibit 447 at Page 15, please, sir.

10 Q. (By Mr. Albritton) What are we looking at?

11 A. This is the first introduction of my survey.

12 Q. Dr. Dhar, what did you do in this survey?

13 A. So I pretty much took Dr. Wecker's questions that he had  
14 up, to the alone motivate question, and I re-ran the survey  
15 that he had.

16 Q. Okay. Now, after -- in your survey, if a respondent  
17 answered yes to alone motivate, did you ask them any  
18 additional questions?

19 A. Yes. I asked them additional questions about other  
20 features that a smartphone has, including many of those that  
21 were listed by Dr. Wecker in his survey.

22 MR. ALBRITTON: Let's look, Mr. Lee, at Page 22 of  
23 Defendant's Exhibit No. 447. And if you would, blow up Intro  
24 Question 4.

25 Q. (By Mr. Albritton) Dr. Dhar, what is Intro Question 4?

1 A. So this is the same introduction that Dr. Wecker had,  
2 which listed the handheld devices and what sort of features  
3 they might have.

4 Q. Did you replicate that list of features, or did you use  
5 that list of features in your survey?

6 A. Yes, I just mentioned those.

7 Q. And did you use the same introduction?

8 A. Yes.

9 MR. ALBRITTON: Now, if we could, Mr. Lee, let's go  
10 to Page 24 and look at Question 4A.

11 Q. (By Mr. Albritton) Is that the question from your survey  
12 that you asked about alone motivate, Dr. Dhar?

13 A. Yes, and that's the same as Dr. Wecker's.

14 Q. So it's precisely the same question?

15 A. Yes.

16 MR. ALBRITTON: Now, if you would, Mr. Lee, let's  
17 go to Page 25.

18 If you would, just blow up Question No. 1; QF1, for  
19 instance.

20 Q. (By Mr. Albritton) Now, if you would, Dr. Dhar, tell us  
21 what we're looking at here.

22 A. So basically what you're looking at is, after asking Dr.  
23 Wecker's question on the alone motivate, I presented them  
24 with additional features of a smartphone or a tablet, and I  
25 asked them the question: For each device listed below,

1 consider the capability to browse the web. Did this  
2 capability motivate you to buy the device?

3 Q. Okay.

4 MR. ALBRITTON: Now, if you would, let's look at --

5 Q. (By Mr. Albritton) So that -- the capability there is to  
6 browse the web; is that right?

7 A. Yes.

8 MR. ALBRITTON: Now, if you would, let's look at,

9 Mr. Lee, QF2. F2, yes.

10 Q. (By Mr. Albritton) Is that an example of another  
11 question that you asked in the same manner, Dr. Dhar?

12 A. That's correct.

13 Q. And what does this one ask about?

14 A. This is about the capability to send emails.

15 Q. Okay.

16 MR. ALBRITTON: Mr. Lee, let's look at QF3, please,  
17 sir.

18 Q. (By Mr. Albritton) And what does that ask about, Dr.  
19 Dhar?

20 A. This asks about the capability to capture photos and  
21 video.

22 Q. So we've looked at QF1, -2, and -3. Are there actually  
23 a total of 11 of those questions that ask about a -- ask  
24 about different features?

25 A. There were 11 for smartphone, and there were 10, I

1 think, for the other devices. Keep in mind that -- that  
2 these products have hundreds of features, and I showed them  
3 only 10 here.

4 Q. Thank you.

5 It appears that you approximated or that you used some  
6 of the questions just exactly the way that Dr. Wecker did.

7 Why did you do that, Dr. Dhar?

8 A. So I had concerns -- other concerns with his  
9 methodology, but I wanted to set that aside; and I wanted to  
10 show -- isolate the problem with this question that Dr.  
11 Wecker used.

12 Q. So what was the purpose of this study that you  
13 undertook?

14 A. It's very simple. And the simple answer is that Dr.  
15 Wecker says that if you answer yes to the alone motivate  
16 question, it means that was the only reason that people were  
17 buying this device.

18 All I wanted to do was see if people answer yes to the  
19 other features, and that would tell me that there were other  
20 reasons why they were buying the device.

21 Q. Does that have any impact on your opinion as to whether  
22 they understood the alone motivate question?

23 A. Yes.

24 Q. And what is that?

25 A. That it's -- my understanding, it is different from Dr.

1 Wecker and Mr. Mills, which is that it is not -- when they  
2 answer the alone motivate question, their understanding is  
3 not that this is the only reason that caused them to buy the  
4 device.

5 MR. ALBRITTON: Mr. Lee, could we please bring up  
6 Defendant's Exhibit 447 at Page 49?

7 Q. (By Mr. Albritton) Dr. Dhar, if you would, please tell  
8 us what we're looking at there.

9 A. So what you're looking at here is just the summary  
10 tables of regular users and purchasers -- purchasers, and I  
11 compare my result here with Dr. Wecker's result for -- for  
12 these questions.

13 And you see that in my survey, we find 38 percent say  
14 they're regular users of iPhone, and Dr. Wecker finds 38  
15 percent. And if you look at some of the other numbers, like  
16 if -- they're roughly very similar.

17 Q. Now, what's the importance of this, Dr. Dhar?

18 A. There's not a huge importance other than they're -- they  
19 both find similar number of regular users and purchasers.

20 MR. ALBRITTON: Mr. Lee, if you would, please bring  
21 up Exhibit 447 at Page 31.

22 Q. (By Mr. Albritton) Dr. Dhar, I'd like to talk to you  
23 about the results of the survey that we've been talking  
24 about. If you would, explain to the members of the jury,  
25 what we're looking at here.

1 A. Sure.

2 So in this -- as I said, I approximated Dr. Wecker's  
3 survey to Question 4A, which is his alone motivate question.  
4 Did the capability to purchase apps from Apple's App Store  
5 alone motivate you to buy the device?

6 161 people said yes. And to those 161 people, I asked  
7 the subsequent questions that are listed on the QF.

8 Q. So read that to us.

9 A. So respondents who said yes to QF4A were asked whether  
10 other features and capabilities motivated them to buy the  
11 devices.

12 Q. Now, let's go through a few of these. What does the  
13 first line indicate?

14 A. It says that 141 out of the 161 people who answered yes  
15 to the alone motivate question also answered yes to  
16 capability to browse the web.

17 Q. And when you say the alone motivate question, you're  
18 talking about the alone motivate question from Dr. Wecker's  
19 survey?

20 A. Yes, sir.

21 Q. What about the next line, Dr. Dhar?

22 A. That shows, again, to the capability to send emails, 141  
23 people answered yes of the 161 who answered yes in Dr.  
24 Wecker's survey.

25 Q. And the rest of this table indicates your results as the

1 remainder of the additional features; is that right?

2 A. Yes, sir.

3 Q. If you would, let's talk about the bottom entry.

4 MR. ALBRITTON: If you would, highlight that, Mr.  
5 Lee.

6 Q. (By Mr. Albritton) And explain what that indicates, Dr.  
7 Dhar.

8 A. So all that indicates is that -- all the 161 people who  
9 answered yes to the alone motivate question, all of them  
10 answered yes to at least one of the features in my survey.

11 Q. What conclusion do you draw from that, Dr. Dhar?

12 A. The conclusion I draw is that Dr. Wecker's understanding  
13 and Mr. Mills' use of that answer yes to that survey to  
14 assume, that means that's the only reason people bought the  
15 device, is incorrect.

16 Q. What does it tell you about the design of the survey  
17 done by Mr. -- or Dr. Wecker?

18 A. It tells me that the alone motivate question is hard to  
19 understand and certainly people are not understanding it as  
20 meaning the only reason to buy the device.

21 Q. And you did similar surveys regarding buying and renting  
22 TVs and movies, correct?

23 A. Correct.

24 Q. And for iPads and iPod Touches?

25 A. Correct.

1 Q. Similar results to all?

2 A. Yes, sir.

3 Q. Same opinion as to all?

4 A. Yes, sir.

5 Q. What is your overall opinion about the results of the  
6 alone motivate question?

7 A. So my opinion is that's one of the measures that Dr.  
8 Wecker uses to value the feature to Apple, and that measure  
9 is highly unreliable.

10 Q. Thank you.

11 MR. ALBRITTON: Mr. Lee, if you would, please, sir,  
12 bring up Plaintiffs' Exhibit No. 205.002, Page 20, Question  
13 4b?

14 Q. (By Mr. Albritton) What are we looking at there, Dr.  
15 Dhar?

16 A. So this is the second measure that Dr. Wecker had to  
17 determine the value of the feature to Apple. I call it the  
18 percentage value question.

19 Q. If you would, tell us, is that Dr. Wecker's actual  
20 question from the materials he produced in this case?

21 A. Yes, I think so.

22 Q. If you would, please read that to the members of the  
23 jury.

24 A. For each device listed below, what portion, if any, of  
25 its value do you attribute to the capability to purchase apps

1 from Apple's App Store.

2 Q. Dr. Dhar, is that question targeted to the year 2009?

3 A. It is not.

4 Q. Is it targeted to any particular time period?

5 A. It is not.

6 Q. Dr. Dhar, did the percentage of value question that you  
7 just read, that question being Q4B, talk about the manner in  
8 which to purchase apps or the manner in which to pay for  
9 apps?

10 A. No, it's about the capability to purchase apps.

11 Q. And what is your understanding about that issue?

12 A. So my understanding, listening to some of the testimony,  
13 is that it's -- this is broader than what the patents at  
14 issue are.

15 MR. ALBRITTON: Mr. Lee, if you would, bring up  
16 Slide No. 5, please, sir?

17 Q. (By Mr. Albritton) What does Dr. Wecker assume that  
18 this survey question relate to?

19 A. So what Dr. Wecker assumes if somebody answers  
20 10 percent of the question, what portion of the value comes  
21 from this feature, he assumes that all the other features of  
22 the device are hundred minus that 10 percent, namely 90  
23 percent.

24 Q. Do you agree, Dr. Dhar?

25 A. I disagree with the methodology.

1 Q. That he used in -- with this question -- if -- is that  
2 right?

3 A. Yes, sir.

4 Q. Would you explain to the members of the jury why?

5 A. So it's interesting. Whenever you -- whenever you point  
6 to one feature and ask what is the portion of the value that  
7 comes from this feature, it's considered leading and leads to  
8 a highly-inflated response, if it's not in the con -- if it's  
9 not in the context of all the features that a product has.

10 Q. Dr. Dhar, did you do anything to study whether this  
11 question could yield or did yield valid results?

12 A. I did. I conducted a survey, although it's a well-known  
13 finding in the academic literature.

14 MR. ALBRITTON: If you would, Mr. Lee, bring up  
15 Defendant's Exhibit 449, at Page 22, please, sir?

16 Q. (By Mr. Albritton) One follow-up question. Your  
17 motivation survey regarding TV/movie rentals is Defendant's  
18 Exhibit No. 448; is that right?

19 A. I don't recall, but I'll take your representation.

20 Q. Thank you.

21 Dr. Dhar, what are we looking at here on the screen?

22 A. This is a -- another survey I did in the matter.

23 Q. Okay. And what was this survey? How did you design  
24 this survey, and what were you seeking to test?

25 A. So, broadly speaking, as I said, I was seeking to test

1 if you ask about one feature at a time for a device that has  
2 hundreds of features, what portion of the value comes from  
3 this feature, it's likely to be inflated, very high. The  
4 numbers are going to be artificially inflated. That's what I  
5 was trying to show here.

6 MR. ALBRITTON: Dr. Dhar, if you would -- I'm  
7 sorry.

8 Mr. Lee, if you would, bring up Defendant's Exhibit  
9 No. 449 at Page 33, please, sir? And highlight for us, or  
10 bring out Question QM1a and 1b.

11 Q. (By Mr. Albritton) Dr. Dhar, if you would, tell us what  
12 is Question QM1a?

13 A. Sure. So -- maybe let me step back. Again, I did this  
14 for many different features. There are around 10 different  
15 features. And each group of respondents saw two questions.

16 The first -- the first question said -- which was  
17 similar to Dr. Wecker's alone motivate question, which said:  
18 For each device listed below, consider the capability to send  
19 and receive emails. Did this capability alone motivate you  
20 to buy the device?

21 Q. Then what did you ask people to do, Dr. Dhar?

22 A. So regardless of their answers to the first question,  
23 yes, no, don't know, they go to the second question, which  
24 is: For each device listed below, what portion, if any, of  
25 its value do you attribute to the capability to send and

1 receive emails. This is Dr. Wecker's percentage value  
2 question.

3 Q. Okay. So for Q1 -- QM1b, is the question phrased the  
4 same way as Dr. Wecker's question, except it doesn't ask  
5 about the capability to purchase apps? It asks about other  
6 features on the phone?

7 A. That's correct.

8 Q. What was the purpose of your study, Dr. Dhar?

9 A. So the purpose was that each group of respondents got  
10 one of these features, and they were asked what's the  
11 percentage of the value. And they did this for 13 features  
12 for the smartphone, I think, and 11 features for the tablet  
13 and iPod Touch.

14 Q. Why did you ask the percentage of value question to all  
15 regular users?

16 A. Because I just wanted to see if -- what the answers --  
17 they were going to be artificially inflated if you ask one  
18 feature at a time.

19 Q. Now, were each of the respondents asked all of these  
20 questions -- that is, questions about each of these  
21 additional features?

22 A. No. Like Dr. Wecker, each group of respondents would  
23 get only one feature at a time.

24 Q. Okay. If you would, explain to us, Dr. Dhar, how you  
25 can ask about different features to different groups of

1 respondents and get a result that is meaningful?

2 A. So that's the beauty of representative sampling, as Dr.  
3 Wecker was saying. So what each -- they're different groups.  
4 They're essentially -- the groups are similar, so the  
5 averages in the groups are the same. What I'm trying to do  
6 is I'm trying to isolate what's the effect of just asking one  
7 feature at a time, what responses people give to the portion  
8 of value.

9 Q. Is this a well-accepted manner in which to conduct  
10 surveys?

11 A. Yes.

12 MR. ALBRITTON: If you would, Mr. Lee, bring up  
13 Defendant's Exhibit 449 at Page 47.

14 Q. (By Mr. Albritton) If you would --

15 MR. ALBRITTON: I'm sorry, I don't believe that's  
16 the right. I'm sorry, yes, it is.

17 Q. (By Mr. Albritton) If you would, I'd like you to tell  
18 on a high level to the jury, what it is we're looking at  
19 here, Dr. Dhar?

20 A. So I think the focus should be maybe on the fourth  
21 column. That will make it easier. The fourth column gives  
22 the average percentage value that respondents gave in the  
23 survey when they were asked one feature at a time.

24 So, for example, the group that got to ask about  
25 capability to send and receive emails, they said it was 43

1 percent of the value of the device.

2 Q. What about for the second line, the capability to browse  
3 the web?

4 A. So the group that got that question said it was 49  
5 percent of the value of the device.

6 Q. What about for Question 3?

7 A. Shoot and -- shoot photos and videos? That was 40  
8 percent.

9 Q. Okay. What about for Question 4, what was the  
10 capability?

11 A. It was to view maps and/or navigate using GPS. That was  
12 33 percent.

13 Q. How about Question No. 12? Let's skip ahead. The  
14 second in the -- the second to the end, the capability to  
15 make and receive phone calls?

16 A. It was 59 percent.

17 Q. And how about the last one, which relates to text  
18 messaging?

19 A. That was 48 percent.

20 Q. Now, Dr. Dhar, if you take the averages of all of these  
21 questions, what does it add up to, what percentage?

22 A. It adds up to 587 percent.

23 Q. What does that tell you, Dr. Dhar?

24 A. That tells me that the technique of asking one feature  
25 at a time for a device that has hundreds of features, what is

1 the value of this feature, is not a proper technique. It's  
2 highly inflated and artificial.

3 Q. If you consider a 95 percent confer -- confidence  
4 interval, what would be the low percentage and the high  
5 percentage?

6 A. Here it says 577 to 598.

7 Q. Let me ask you, just as an example, if you just took the  
8 questions I asked you about, QM1 through 4, 6, 12, and 13,  
9 and you added those up, would those add up to more than a  
10 hundred percent?

11 A. Sorry, you said the first four?

12 Q. Yeah, let's just take the first four?

13 A. Yes, that adds up to around 92, 132, 165.

14 Q. Okay. And then what about if you add -- so we're at  
15 165. And then what about if you add the result for Question  
16 6, Apple brand?

17 A. 165, 172, 232.

18 Q. 232. What about if you go and add the capability to  
19 make and send -- make and receive phone calls?

20 A. 280.

21 Q. Okay. And then if you --

22 A. Sorry, that's -- I added 48, so 232, that would be 291.

23 Q. And then if you add the capability to send and receive  
24 text messages?

25 A. 239.

1 Q. Now, 239 percent --

2 A. 339, sorry.

3 Q. 339, just for those feature alone?

4 A. Yes, and the smartphone has hundreds of features.

5 Q. And are each of those independent features?

6 A. The ones that are highlighted are independent. Some of  
7 them, as Dr. Wecker said, could be dependent; but these ones  
8 are clearly independent of each other.

9 Q. Does this survey result and this survey show you the  
10 full extent of the bias of the question that Dr. Wecker  
11 asked?

12 A. No, because I used only 11 features, and the phone has  
13 hundreds of features.

14 Q. And did you ask -- do a similar study with respect to  
15 the iPad and the iPod Touch?

16 A. I did.

17 Q. And did you get similar results?

18 A. The total percentages were 3 -- I think in the range of  
19 300 something, but they were similar.

20 MR. ALBRITTON: If you would, Mr. Lee, bring up  
21 Plaintiffs' Exhibit No. 205.001 at Page 55, and then draw out  
22 for us Question No. 6, please, sir.

23 Q. (By Mr. Albritton) Dr. Dhar, what are we looking at on  
24 the screen?

25 A. So this is a third measure of value to Apple for this

1 feature that Dr. Wecker had. I call it the purchase intent  
2 question.

3 Q. And this is actually Dr. Wecker's question; is that  
4 correct?

5 A. Correct.

6 Q. And that comes from a Plaintiffs' exhibit?

7 A. Yes, sir.

8 Q. Are there some things about the text that stick out to  
9 you, Dr. Dhar?

10 A. So, obviously, this is bold and highlighted, the App  
11 Store application and disabled, and then I mentioned some  
12 other concerns I had with the description of the alternative.

13 Q. Okay. If you would, talk to us about the concept of  
14 framing, Dr. Dhar.

15 A. So the concept of framing is when you describe the  
16 alternative, you can describe it in a negative way, in a  
17 positive way, or in a neutral way. And so framing refers to  
18 when you frame something positively or negatively.

19 Q. Were you here when Dr. Jones testified in this case?

20 A. Dr. Jones? Yes, I was in the room.

21 Q. And is this the scenario or one of the scenario --  
22 scenarios that Dr. Jones testified about?

23 A. I think so.

24 Q. Is it your understanding that Dr. Jones drafted this --  
25 this scenario used in that question?

1 A. I think that's what Dr. Wecker testified, but, Counsel,  
2 I don't remember all the specific details sitting here.

3 Q. Okay. I also -- I won't go over with you specifically,  
4 but did you consider Plaintiffs' Exhibit 54.001, Page 50, at  
5 Question 8?

6 A. Yes, I did.

7 Q. Okay. And is your testimony about that Question 6  
8 relevant also here to this Question 8 that's on the screen?

9 A. For some of that -- some of the concerns, yes.

10 Q. Okay. Now, if you would --

11 MR. ALBRITTON: Let's go back to Question 6,  
12 please, Mr. Lee.

13 Q. (By Mr. Albritton) If you would, talk to us -- you've  
14 told us about framing. What is your opinion about how this  
15 scenario is framed and how it impacted the result of this  
16 survey?

17 A. So in short, the value of this feature would depend on  
18 what the alternative is because it's asking about how much do  
19 you value this, compared to something else. So what framing  
20 says -- what is it compared to is seeing -- is framed  
21 negatively, that will inflate or that will boost the  
22 attractiveness of this feature.

23 Q. Is there a specific word that's used in that -- in that  
24 scenario that causes you an issue with respect to framing?

25 A. So the one I pointed out in my report was that instead,

1 he could browse for and install apps; but before using the  
2 apps, you would need to do something. So the words like  
3 "but," it seems harmless and simple, they create negative  
4 frame.

5 Q. You were here when Dr. Wecker testified; is that right?

6 A. Yes.

7 MR. ALBRITTON: If you would, Mr. Lee, bring up the  
8 transcript of 2/17 in the afternoon, Page 102, Lines 13  
9 through 103, Line 1?

10 Q. (By Mr. Albritton) If you would read that to the jury,  
11 Mr. -- or Dr. Dhar?

12 A. Dr. Wecker, do you recall placing bold or blue  
13 highlighting on certain words in your surveys?

14 Yes.

15 And one of those words was disabled, correct?

16 Yes.

17 And you -- it was your choice to put the word disabled  
18 in blue text, correct?

19 Yes.

20 And disabled is a -- has a negative connotation, doesn't  
21 it, sir?

22 Yes, it's intended to.

23 It's intentional?

24 Yes.

25 Q. Thank you.

1 MR. ALBRITTON: You can take that down, Mr. Lee.

2 Q. (By Mr. Albritton) So your opinions with respect to the  
3 question or the inclusion of the word "but," do those -- as  
4 it relates to framing, does that have equal applicability to  
5 that blue highlighted word, "disabled"?

6 A. Yes. Anything that's framed negatively would have an  
7 effect on lowering the attractiveness of the alternative.

8 Q. How does the improper framing of a scenario affect the  
9 result of a question?

10 A. So, as I said, the result of the question really is, how  
11 much do you like A compared to B? B is the alternative here.  
12 So if B is described in a negative sense, then A looks more  
13 attractive.

14 Q. Can you give us an every-day example of this phenomenon,  
15 Dr. Dhar?

16 A. Sure. There's a well-known study on looking at people's  
17 evaluation of meat. It's like 75 percent lean versus 25  
18 percent fat; and it's the same meat, but people -- the frames  
19 are different and people think 75 percent lean is much more  
20 attractive than 25 percent fat.

21 Q. Is there another problem with how the scenario and  
22 questions are written in this case?

23 A. So I had mentioned in my report the concern with the  
24 payment information that was -- that made the alternative  
25 seem more burdensome.

1 Q. Well, explain that to us.

2 A. Sure. Is it -- can I see that scenario?

3 Q. Yes, sir, I apologize.

4 MR. ALBRITTON: If you would bring back up Question

5 No. 6, and I believe that's in 447. I'm sorry, it is not.

6 Let me --

7 I apologize, Your Honor.

8 It's Plaintiffs' Exhibit 54.01 -- 001 at Page 50,

9 Question 8. Actually go to Page 17 if you would, sir -- 17,  
10 please, Mr. Lee.

11 I apologize. That's not it, Mr. Lee. I apologize.

12 It's -- it's 205.002, Page 17, where it describes the manner  
13 in which information is stored -- payment information is  
14 stored.

15 Q. (By Mr. Albritton) All right. Dr. Dhar, would you read  
16 this to us and tell us the importance of this to your  
17 opinions?

18 A. So this is a preamble in Dr. Wecker's survey, and one of  
19 the sentences says -- it's basically describing the App  
20 Store. And one of the sentences says that the App Store  
21 saves your payment information for ease of making multiple  
22 purchases.

23 MR. ALBRITTON: Okay. Now, let's go back to the  
24 question. The question is Question No. 8 on 54.001.

25 Q. (By Mr. Albritton) Okay. So the people who answered

1 this Question No. 8 had done so after having seen that  
2 description that we just went through about the storage of  
3 payment information; is that right?

4 A. Yes.

5 Q. Okay. So if you would, explain to the members of the  
6 jury your concern as -- of this question as it relates to the  
7 description of the payment information.

8 A. So my concern is really that it makes the alternative  
9 seem potentially burdensome. It says: But before using the  
10 app, you would need to complete each purchase by separately  
11 visiting the website and entering your payment information.

12 And some people may understand entering your payment  
13 information to mean entering your credit card, your address,  
14 and other details. Some people may take it to mean user ID  
15 and password, which might be less burdensome.

16 So there could be a range in terms of how people take  
17 this payment information to mean.

18 Q. And how does that affect your opinion about the validity  
19 and reliability of the results Dr. Wecker got to that  
20 question?

21 A. Well, to the extent people interpret it to be more  
22 burdensome and there are less burdensome ways available, that  
23 will make the alternative less attractive and make the  
24 feature tested more attractive, because they're comparing  
25 always A versus B.

1 Q. Dr. Dhar, do you have concerns about this question with  
2 respect to the manner in which the technology or the feature  
3 is described?

4 A. It's, again, talking about capability to purchase apps.  
5 And my understanding is that the patents are, on manner of  
6 payment, related to that, not just purchasing apps or renting  
7 movies.

8 Q. Were you here when Mr. Racz testified that he didn't  
9 invent the ability to purchase digital content online?

10 A. Yes.

11 Q. Did you do a survey in this case, Dr. Dhar, from which  
12 damages could be affirmatively calculated?

13 A. I did not.

14 Q. Why not?

15 A. I was not asked to do a survey by Apple in this case;  
16 and my understanding is Dr. Becker, who is the damages  
17 expert, is going to decide, based on some of the  
18 documentation, what was happening at the time, 2009 time  
19 period, which is the relevant time period to determine the  
20 damages.

21 Q. And do you have a problem with the -- is there any issue  
22 with doing a survey in 2014 and trying to measure things that  
23 happened back in 2009 or that would have happened in 2009?

24 A. I mean, there would certainly be a concern. You would  
25 have to make a lot of heroic assumptions about the value of

1 the features today and compare it to the value in 2009. The  
2 survey would not be able to ask, in other words, the value in  
3 2009.

4 Q. Thank you.

5 MR. ALBRITTON: To correct the record, when you and  
6 I spoke earlier about the payment information question, it  
7 was Plaintiffs' Exhibit 205.001 at Page 55.

8 Q. (By Mr. Albritton) Dr. Dhar, you were here in the  
9 courtroom when there was discussion concerning Apple's  
10 surveys?

11 A. Some of it. I was not here all through, but I heard  
12 some of it.

13 MR. WARD: Objection, Your Honor. This is outside  
14 his report. He's attempting to bolster the witness before I  
15 have an opportunity to cross-examine him.

16 MR. ALBRITTON: I was merely going to ask him if  
17 they caused him any concern, and nothing else, Your Honor.

18 THE COURT: Not permitted to go outside the report.

19 MR. ALBRITTON: Yes, sir.

20 THE COURT: I'll sustain the objection.

21 MR. ALBRITTON: Thank you, Your Honor.

22 Q. (By Mr. Albritton) Dr. Dhar, in your opinion, are Dr.  
23 Wecker's results reliable and -- and invalid?

24 A. Not in my opinion.

25 Q. In your opinion, is it appropriate to rely on them to

1 make important decisions?

2 A. Not in my opinion.

3 Q. Do you view the award of \$850 million an important  
4 decision?

5 A. I think all of us would, yes.

6 MR. ALBRITTON: Pass the witness, Your Honor.

7 THE COURT: Counsel, approach the bench.

8 (Bench conference.)

9 THE COURT: All right. We're going to stop for the  
10 day here. We'll start again Monday morning.

11 MR. WARD: Yes, Your Honor.

12 MR. ALBRITTON: Thank you very much, Your Honor.

13 (Bench conference concluded.)

14 THE COURT: Ladies and Gentlemen, we are going to  
15 use this time as a good point to break for the day.

16 In case you had forgotten, which I doubt you had,  
17 but let me remind you, we're not going to be in session  
18 tomorrow, so you get a three-day weekend. And I will see you  
19 back here Monday morning.

20 I'm going to ask that you be assembled in the jury  
21 room by about 8:20. As we started at 8:30 this morning,  
22 we'll do our best to start again Monday morning at 8:30.

23 I remind you, as you would expect, not to discuss  
24 the case among yourselves or with anyone. I ask you to  
25 follow all the other instructions and directives that I've

1 given you.

2 Have a safe and enjoyable weekend. I will see you  
3 Monday morning. You're excused at this time.

4 Please take your jury notebooks to the jury room.

5 COURT SECURITY OFFICER: All rise.

6 (Jury out.)

7 THE COURT: All right. Counsel, please have your  
8 exhibits ready to go Monday morning to read into the record  
9 that come from the list of pre-admitted exhibits. I'll be in  
10 chambers by 7:30.

11 If there are late-breaking disputes over the  
12 weekend -- I am hopeful that there won't be -- but we'll be  
13 here if you need us.

14 Is there anything from either party before we  
15 recess until Monday morning?

16 Anything from the Plaintiff?

17 MR. CALDWELL: No, Your Honor.

18 THE COURT: Anything from the Defendant?

19 MR. BATCHELDER: No, sir.

20 THE COURT: We stand in recess. Have a good  
21 weekend.

22 (Court adjourned.)

23

24

25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of our abilities.

/s/ \_\_\_\_\_  
SHEA SLOAN, CSR, RPR  
Official Court Reporter  
State of Texas No.: 3081  
Expiration Date: 12/31/16

February 19, 2015

/s/ \_\_\_\_\_  
SHELLY HOLMES, CSR, TCRR  
Deputy Official Court Reporter  
State of Texas No.: 7804  
Expiration Date 12/31/16